

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

LATONYA DANCER,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 5:16-CV-00186-RWS
	§	
v.	§	
	§	
DIRECTOR, TDCJ-CID,	§	
	§	
Defendant.	§	
	§	

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner LaTonya Dancer, an inmate confined at the Woodman State Jail, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed without prejudice for failure to exhaust state court remedies. Docket No. 2 at 2.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. No objections to the Report and Recommendation have been filed. This Court agrees with the Magistrate Judge that, as Petitioner stated, she had not presented her claims to the Texas Court of Criminal Appeals, and she did not exhaust her state court remedies before filing her federal petition. *Id.* Accordingly, finding no plain error in the findings of fact and conclusions of law of the Magistrate Judge, this Court **ADOPTS** the Magistrate Judge’s findings and conclusions as those of this Court. It is hereby

ORDERED that the petitioners claims are **DISMISSED WITHOUT PREJUDICE**.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish that she would prevail on the merits. Rather, she must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (2000).

In this case, Petitioner has not shown that the issue of whether she exhausted her state court remedies is subject to debate among jurists of reason, and the questions presented by the Petition are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 6th day of March, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE