

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

ALEX QUALLS,

Petitioner,

v.

J WILSON, WARDEN; AND DIR OF
TDCJ,

Respondents.

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CIVIL ACTION NO. 5:16-CV-00194-RWS

**ORDER ADOPTING THE MAGISTRATE JUDGE’S
REPORT AND RECOMMENDATION**

Petitioner Alex Qualls, an inmate confined at the Telford Unit, proceeding pro se, brought 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, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends this petition for writ of habeas corpus should be dismissed without prejudice for want of prosecution.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Petitioner acknowledged receipt of the Report and Recommendation on July 19, 2017. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

The Court agrees with the Magistrate Judge that Petitioner has not complied with the Court’s previous orders to pay the filing fee for this petition, and has, therefore, failed to diligently prosecute this case pursuant to Fed. R. Civ. P. 41(b).

Accordingly, finding no plain error in the findings of fact and conclusions of law of the Magistrate Judge, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 12) as the findings and conclusions of this Court. It is thereby **ORDERED** that Mr. Qualls' petition is **DENIED**.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. See 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, 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); see also *Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he 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 is 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 (5th Cir.), cert. denied, 531 U.S. 849 (2000).

Here, Petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by Petitioner are not novel and have been consistently resolved adversely to his position. In addition, the questions presented 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 shall not be issued.

A final judgment will be entered in this case in accordance with the above.

SIGNED this 9th day of January, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE