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

CORY PAUL ZIOLKOWSKI,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 5:17-CV-00050-RWS-CMC
v.	§	
	§	
DIRECTOR, TDCJ-CID;	§	
	§	
Defendant.	§	

ORDER

Petitioner, Cory Paul Ziolkowski, 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 Craven, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Petitioner filed the above-referenced petition for writ of habeas corpus contesting his state court conviction (Docket No. 1). The Court entered a Show Cause Order (Docket No. 8), and in its answer, Respondent asserted that the petition was time-barred (Docket No. 10). Petitioner filed a motion for summary judgment (Docket No. 16). The Magistrate Judge issued two separate Reports and Recommendations, first recommending the Petitioner's motion for summary judgment be dismissed (Docket No. 17) and second recommending the petition for writ of habeas corpus be denied as time-barred (Docket No. 18).

Petitioner acknowledged receipt of both reports. (Docket Nos. 19, 20). The parties have not filed objections to either report. Accordingly, any aggrieved party is not entitled to *de novo* review by the District Judge of those findings, conclusion and recommendations, and except

upon grounds of plain error, the parties are barred from appellate review of the unobjected to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1995) (en banc).

Nonetheless, the Court has reviewed the pleadings in the cause and agrees with the reports of the Magistrate Judge. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) ("[T]he statute permits the district court to give to the magistrate's proposed findings of fact and recommendations 'such weight as [their] merit commands and the sounds discretion of the judge warrants, . . . ' ") (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). There being no grounds of plain error or manifest injustice, the Court hereby **ADOPTS** the Reports and Recommendations of the Magistrate Judge (Docket Nos. 17, 18) as the findings and conclusions of this Court. A Final Judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

Additionally, the Court is of the opinion 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. *See* 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 he would 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 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 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, petitioner has not shown that any of the issues would be subject to debate among jurists of reason. The questions presented are not worthy of encouragement to proceed further. Therefore, the petitioner has failed to make a sufficient showing to merit the issuance of certificate of appealability. Accordingly, a certificate of appealability will not be issued.

It is therefore

ORDERED that the reports of the Magistrate Judge (Docket Nos. 17, 18) are **ADOPTED** as the opinion of this court. It is further

ORDERED that Plaintiff's motion for summary judgment is **DENIED**. Further, it is

ORDERED that the above-styled action is **DISMISSED WITH PREJUDICE** as time-barred. Finally, it is

ORDERED that any and all motions by either party not previously ruled on are **DENIED AS MOOT**.

So ORDERED and SIGNED this 20th day of September, 2019.

Robert W Schroeder III

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE