IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

MARVIN FRANK HALL	§	
v.	§	CIVIL ACTION NO. 5:17-CV-202
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Marvin Frank Hall, a prisoner confined at the Ferguson Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket No. 1.

The Court ordered that this matter be referred to the Honorable Caroline Craven, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. The Magistrate judge has submitted a Report and Recommendation (Docket No. 4) recommending the petition be dismissed as repetitious of another petition pending in this Court.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. The petitioner filed objections to the Report and Recommendation. Docket No. 5.

The Court has conducted a de novo review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit.

This petition challenges the constitutionality of the petitioner's assault conviction in cause number F-8796 in Franklin County, Texas. Docket No. 1. The petitioner previously filed a federal

habeas petition challenging his conviction in cause number F-8796. See Hall v. Director, Civil Action No. 5:15-cv-157 (E.D. Tex.). Although the Magistrate Judge recommended dismissing Civil Action Number 5:15-cv-157, the report and recommendation was withdrawn, and the petition remains pending before this Court. Case No. 5:15-cv-157, Docket No. 8 at 1. This petition is thus repetitious of a pending petition and should be dismissed.

Additionally, in this case, the petitioner is not entitled to the issuance of 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; Avila v. Quarterman, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. Slack, 529 U.S. at 484; Elizalde, 362 F.3d at 328. 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. 2000).

Petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason or that a procedural ruling was incorrect. 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. Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability.

Accordingly, the petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation (Docket No. 4). A certificate of appealability will not be issued.

SIGNED this 10th day of January, 2018.

Robert W Schroeder III

ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE