

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

JOSHUA THOMPSON,

Plaintiff,

v.

USA,

Defendant.

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CIVIL ACTION NO. 5:18-CV-00024-RWS

ORDER

Movant Joshua Thompson, an inmate confined at the Federal Correctional Institution in Forrest City, Arkansas, proceeding *pro se*, brought this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. 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 that the motion be denied and dismissed. Docket No. 6.

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. Thompson acknowledged receipt of the Report and Recommendation on October 22, 2020. Docket No. 7. No objections to the Report and Recommendation have been filed. Accordingly, Thompson is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, he is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court.

Nonetheless, the Court has reviewed the pleadings in this case and the Report of the Magistrate Judge and agrees with the Report 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 sound discretion of the judge warrants’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)).

Additionally, the Court finds that Thompson 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 movant 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 movant 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 movant, 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, Thompson has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. Thompson advances factual and legal questions that are not novel and that have been consistently resolved adversely to his position. In addition, the questions

presented are not worthy of encouragement to proceed further. Therefore, Thompson 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.

The Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is

The above-styled motion to vacate, set aside or correct sentence is **DENIED** and **DISMISSED**.

So **ORDERED** and **SIGNED** this 11th day of December, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE