

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

PRADER LAVALL BROWN §
v. § CIVIL ACTION NO. 6:10cv634
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Prader Brown, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his confinement. This Court ordered that the matter be referred to the United States Magistrate Judge 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.

Brown states that he was convicted of second-degree manslaughter in Harris County, Texas, in November of 2005, receiving a sentence of 20 years in prison. Court records show that this is the second federal habeas petition which Brown has filed concerning this same conviction. *See Brown v. Thaler*, civil action no. 4:09cv3226 (S.D.Tex., dismissed with prejudice October 23, 2009, no appeal taken).

After review of the pleadings, the Magistrate Judge issued a Report recommending that Brown’s petition be dismissed because he failed to show that he had received permission from the Fifth Circuit Court of Appeals to file a successive petition. 28 U.S.C. §2244(b)(3). Brown received a copy of this Report on January 25, 2011, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and

legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 5) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled petition is hereby DISMISSED without prejudice. Brown may refile his petition at such time as he obtains leave from the Fifth Circuit Court of Appeals to file a second or successive petition. 28 U.S.C. §2244(b)(3). He may not refile this petition without first obtaining such leave, and the dismissal of this petition shall have no effect upon his right to seek permission from the Fifth Circuit to file a second or successive petition. It is further

ORDERED that a certificate of appealability is DENIED *sua sponte*. Such denial refers solely to an appeal of the decision in this case and shall likewise have no effect upon Brown's right to seek permission from the Fifth Circuit to file a second or successive petition. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

SIGNED this 8th day of March, 2011.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE