

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

GAYLYNN STOUT §  
v. § CIVIL ACTION NO. 6:11cv384  
DIRECTOR, TDCJ §

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

The Petitioner Gaylynn Stout filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his confinement, with respect to the denial of parole. 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.

The Magistrate Judge ordered the Respondent to answer the petition, and the Respondent filed a motion to dismiss based upon the failure to exhaust state remedies. The Respondent noted that Stout had not filed any state habeas corpus petitions and thus had not presented his claims to the highest court for the State of Texas. Stout did not file a response to the motion.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice for failure to exhaust state remedies. Stout did not file objections to this Report; instead, he filed a response acknowledging that the Magistrate Judge was correct, saying that he did not know of the exhaustion requirement and so did not seek state habeas corpus relief. Because Stout did not file any objections to the proposed findings and conclusions of the Magistrate Judge, 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. 12) is ADOPTED as the opinion of the District Court. It is further

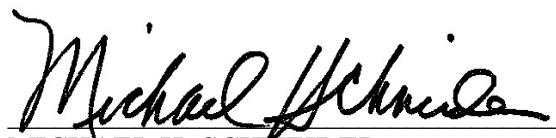
ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice for failure to exhaust state remedies. It is further

ORDERED that the Petitioner Gaylynn Stout is hereby DENIED a certificate of appealability *sua sponte*. The denial of this certificate of appealability relates only to an appeal of this present case and has no effect upon Stout's right to seek relief through the courts of the State of Texas, nor upon his right to re-file his petition in federal court in the event that the state courts do not grant him the relief that he seeks. Finally, it is

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

**It is SO ORDERED.**

**SIGNED this 3rd day of January, 2012.**



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MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE