



dismissed. He also complains that he cannot get his state appellate attorney to tell him if his appeal is still pending, although he believes that the appeal was affirmed as of August 10, 2016. Davis states that he wants to appeal his case and complains that he was set up so all of his possessions could be sold by a girl whom he thought was good but was the devil, but the court still did not find him innocent.

### **III. Discussion**

As the Magistrate Judge stated, cause no. 6:16cv232 is still pending. No ruling has been made, nor has a Report issued recommending disposition of the case. The Magistrate Judge correctly determined that the present case simply duplicates pending litigation and should be dismissed on that basis. *See Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993).

Davis is correct that his direct appeal was affirmed on August 10, 2016. The [on-line records of the Texas Court of Criminal Appeals](#) show that Davis did not seek discretionary review of this affirmance, nor has he sought state habeas corpus relief. He has not shown any basis for filing a second habeas corpus petition when he already has one pending. Davis' objections are without merit.

### **IV. Conclusion**

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Petitioner objected. *See* 28 U.S.C. §636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Petitioner's objections are without merit. It is accordingly

**ORDERED** that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 5) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled application for the writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**. It is further

**ORDERED** that the Petitioner Michael Davis is **DENIED** a certificate of appealability *sua sponte*. The denial of a certificate of appealability relates only to the dismissal of this case and shall not affect Davis' right to pursue his claims in cause no. 6:16cv232, or to seek relief in the courts of the State of Texas. Finally, it is

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

So **ORDERED** and **SIGNED** this **22** day of **September, 2017**.



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Ron Clark, United States District Judge