

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

DUSTAN KILLINGSWORTH,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 6:19-cv-595-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Dustan Killingsworth, an inmate confined within the Texas Department of Criminal Justice, proceeding pro se, filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge, the Honorable K. Nicole Mitchell, for findings of fact, conclusions of law, and recommendations for disposition.

On April 6, 2020, Judge Mitchell issued a Report and Recommendation recommending that the Court deny the petition and dismiss this case with prejudice for failure to exhaust state remedies. Judge Mitchell also recommended that a certificate of appealability be denied. Docket No. 6. A copy of this Report was mailed to Petitioner.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law.

Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Petitioner did not object in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 6) as the findings of this Court. This petition for habeas corpus is hereby **DENIED** and this action is **DISMISSED WITH PREJUDICE**. The Court **DENIES** a certificate of appealability only as to an appeal of this case and without effect on Petitioner's right to seek relief in state court or to again seek relief in federal court if state courts do not grant the relief he seeks.

So ordered and signed on this
Feb 16, 2021



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE