

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

BURNS TILTON BOYD                         §  
v.   §         CIVIL ACTION NO. 9:09cv8  
DIRECTOR, TDCJ-CID                     §

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

The Petitioner Burns Tilton Boyd, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case 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.

Boyd says that he was convicted of burglary of a habitation, receiving a sentence of 70 years in prison. He took a direct appeal through the Texas appellate system and has also previously sought federal habeas corpus relief concerning this same conviction. *See Boyd v. Director, TDCJ-CID*, civil action no. 9:04cv271 (E.D.Tex., dismissed May 23, 2005). Boyd appealed the denial of his federal habeas corpus petition, but the Fifth Circuit denied him a certificate of appealability and the Supreme Court denied a writ of certiorari.

After review of the pleadings, the Magistrate Judge issued a Report recommending that Boyd's petition be dismissed. The Magistrate Judge noted that Boyd had not secured permission from the Fifth Circuit Court of Appeals to file a successive petition, as required by 28 U.S.C. §2244(b)(3). Until Boyd obtains such permission, the Magistrate Judge said, the district court lacks jurisdiction to hear his claims.

Boyd filed objections to the Magistrate Judge's Report on February 12, 2009. In these objections, he acknowledges that the basis for the recommendation of dismissal was the fact that he has not received permission to file a successive petition, but Boyd does not dispute this; instead, he argues the merits of his claims and says that he should be given an evidentiary hearing. His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition and memorandum in support, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Petitioner are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge 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, with refiling conditioned upon receipt of permission from the Fifth Circuit Court of Appeals to file a successive petition. He may not refile this petition without first obtaining such permission, and the dismissal of the present case shall have no effect upon Boyd's right to seek permission from the Fifth Circuit to file a second or successive petition. It is further

ORDERED that the Petitioner Burns Tilton Boyd is hereby DENIED a certificate of appealability *sua sponte*. Such denial refers only to an appeal of the decision in the present case and likewise has no effect upon Boyd's right to seek permission from the Fifth Circuit to file a successive petition. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED. So ORDERED and SIGNED this 5 day of March, 2009.



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Ron Clark, United States District Judge