

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CALEB LOGAN HART,

Petitioner,

v.

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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CIVIL ACTION NO. 2:17-CV-6-Z-BR

ORDER ADOPTING MAGISTRATE JUDGE’S FINDINGS AND CONCLUSIONS AND DENYING PETITION FOR A WRIT OF HABEAS CORPUS

On June 14, 2019, the United States Magistrate Judge entered findings and conclusions on the Petition for a Writ of Habeas Corpus. The Magistrate Judge RECOMMENDS that the petition be DENIED. No objections to the findings, conclusions, and recommendation have been filed. After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the Court concludes that the findings and conclusions are correct. It is therefore ORDERED that the findings, conclusions, and recommendation of the Magistrate Judge are ADOPTED, and the Petition for a Writ of Habeas Corpus is DENIED.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, and 28 U.S.C. § 2253(c), the Court denies a certificate of appealability because Petitioner has failed to make “a substantial showing of the denial of a constitutional right.” *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). The Court ADOPTS and incorporates by reference the Magistrate


Judge's findings, conclusions, and recommendation filed in this case in support of its finding that Petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Id.* at 484.

On August 26, 2019, Petitioner filed a "Motion for Protective Petition." The motion requests the Court to stay and abet his federal habeas proceeding because he has claims unexhausted in state court. "Stay and abeyance is only appropriate when the district court determined there was good cause for the petitioner's failure to exhaust his claims first in state court." *Rhines v. Weber*, 544 U.S. 269, 277 (2005). Petitioner has not presented good cause for his failure to exhaust his claims first in state court. Therefore, Petitioner's motion is DENIED.

If Petitioner files a notice of appeal,

- (X) Petitioner may proceed *in forma pauperis* on appeal. See Federal Rule of Appellate Procedure 24(a)(3).
- () Petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* on appeal.

SIGNED September 17, 2019.



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE