

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DAVID LAMAR MILLER,)
ID # 1228416,)
Petitioner,)
vs.)
RICK THALER, Director,)
Texas Department of Criminal)
Justice, Correctional Institutions Division,)
Respondent.)

No. 3:11-CV-1667-D

ORDER


After conducting *de novo* review of the findings, conclusions, and recommendation of the United States Magistrate Judge and petitioner’s objections thereto, in accordance with 28 U.S.C. § 636(b)(1), the court is of the opinion that the findings and conclusions of the magistrate judge are correct, and they are adopted as the findings and conclusions of the court. For the reasons stated in the findings, conclusions, and recommendation of the United States Magistrate Judge, the petition for habeas corpus is transferred to the United States Court of Appeals for the Fifth Circuit pursuant to *Henderson v. Haro*, 282 F.3d 862, 864 (5th Cir. 2002), and *In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997).

In accordance with Fed. R. App. P. 22(b), and 28 U.S.C. § 2253(c) and after considering the record in this case and the recommendation of the magistrate judge, petitioner is denied a certificate of appealability. The court adopts and incorporates by reference the magistrate judge’s findings, conclusions, and recommendation in support of its finding that the 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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

SO ORDERED.

August 31, 2011.



SIDNEY A. FITZWATER
CHIEF JUDGE