

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

DWAYNE BRIGHAM, #46056-177,
Petitioner,

v.

MYRON BATTS, Warden,
Respondent.

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3:14-CV-1418-O-BK

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. No objections were filed. Having reviewed the proposed findings, conclusions, and recommendation for plain error, the Court finds none and **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that this action is **DISMISSED** without prejudice for failure to exhaust administrative remedies.

Because Petitioner filed his petition under 28 U.S.C. § 2241, he is not required to obtain a certificate of appealability in the event of an appeal. *Padilla v. United States*, 416 F.3d 424, 425 (5th Cir. 2005) (per curiam). However, the Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3). In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th

Cir. 1983).¹ In the event of an appeal, Plaintiff/Petitioner may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

SO ORDERED on this **6th day** of **August, 2014**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

¹ Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.