

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

JESUS MIROLA §
(TDCJ No. 1935276), §
§
Petitioner, §
§
V. § No. 3:17-cv-1888-N
§
§
LORIE DAVIS, Director §
Texas Department of Criminal Justice §
Correctional Institutions Division, §
§
§
Respondent. §

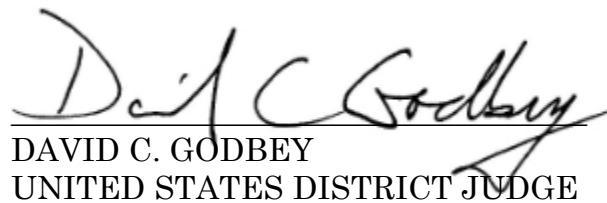
**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE
JUDGE AND DENYING A CERTIFICATE OF APPEALABILITY**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case, after which Petitioner filed Motion to Reconsider Stay and Abate. That motion is properly treated as an objection. The District Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding no error, the Court ACCEPTS the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the Court DENIES a certificate of appealability. 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 that reasonable jurists would find "it debatable whether the petition [currently] states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling" – that Petitioner did not fully and properly exhausted state court remedies prior to filing the 28 U.S.C. § 2254 application. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).¹ In the event that Petitioner will file a notice of appeal, the Court notes that he shall either pay the appellate filing fee of \$505.00 or move for leave to proceed *in forma pauperis* on appeal.

SO ORDERED this 29th day of September, 2017.



DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE

¹ Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.