

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

RYAN ANDREW PEUCKER,
#2008689,
Petitioner,

§
§
§
§
§
§
§
§
§
§

v.

CIVIL NO. 3:18-CV-1370-D

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Div.,
Respondent.

ORDER

I

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case on June 20, 2019. Petitioner filed objections on July 12, 2019, and the undersigned district judge has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the court adopts the findings, conclusions, and recommendation of the United States Magistrate Judge. It is therefore ordered that the petition for habeas corpus under 28 U.S.C. § 2254 is denied.

II

Petitioner filed on July 5, 2019 a motion for an evidentiary hearing. A “review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011); *see also Blue v. Thaler*, 665 F.3d 647, 656 (5th Cir. 2011) (same rule applies to factual determinations under § 2254(d)(2)). Here, the petition concerns only claims under § 2254(d) that were adjudicated on the merits in state court. Petitioner cannot overcome the limitation of § 2254(d) on the record that was before the state court, and, therefore is not entitled to an evidentiary hearing. Accordingly, petitioner’s motion for an

evidentiary hearing is denied.

III

Considering the record in this case and pursuant to Fed. R. App. P. 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 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).

If petitioner files a notice of appeal,

- () petitioner may proceed *in forma pauperis* on appeal.
- (X) petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED.

July 16, 2019.



SIDNEY A. FITZWATER
SENIOR JUDGE