

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ELIGAH DARNELL JR.	§	
	§	
VS.	§	CIVIL ACTION NO.4:12-CV-098-Y
	§	
RICK THALER,	§	
Director, T.D.C.J.	§	
Correctional Institutions Div.,	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
AND ORDER DENYING CERTIFICATE OF APPEALABILITY

In this action brought by petitioner Eligah Darnell Jr. under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on August 6, 2012; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on August 20, 2012.

The Court, after **de novo** review, concludes that Petitioner's objections must be overruled, that the respondent's motion to dismiss should be denied, and that the petition for writ of habeas corpus should be denied, for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

The respondent's motion to dismiss for failure to exhaust state court remedies (doc. 20) is DENIED.

Petitioner Eligah Darnell Jr.'s petition for writ of habeas corpus under 28 U.S.C. § 2254 is DENIED.¹

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.² Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."³ The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."⁴ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁵

Upon review and consideration of the record in the above-referenced case as to whether petitioner Darnell has made a showing that reasonable jurists would question this Court's rulings, the

¹Darnell also filed a motion for appointment of counsel (doc. 23), a motion for an evidentiary hearing (doc. 24). and a motion for discovery (doc. 25) After review of these motions in light of the magistrate judge's thorough report and recommendation, the Court concludes that these motions must be DENIED.

²See Fed. R. App. P. 22(b).

³RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

⁴28 U.S.C.A. § 2253(c)(2)(West 2006).

⁵*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003), citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the August 6, 2012 Findings, Conclusions, and Recommendation of the United States Magistrate Judge.⁶

Therefore, a certificate of appealability should not issue.

SIGNED October 1, 2012.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

⁶See Fed. R. App. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2)(West 2006).