

United States District Court
Southern District of Texas

ENTERED

January 07, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

VICTOR HUGO CANALES; aka	§	
RIVERA-SALAZAR,	§	
	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. 2:19-CV-330
	§	
LORIE DAVIS,	§	
	§	
Respondent.	§	

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

Before the Court is Magistrate Judge Julie Hampton’s Memorandum and Recommendation (M&R). (D.E. 33). The M&R recommends that the Court grant Respondent’s motion for summary judgment (D.E. 15) and dismiss Petitioner’s petition for writ of habeas corpus (D.E. 1). However, the M&R recommends that the Court grant Petitioner a certificate of appealability. (D.E. 33, p. 2); *see* 28 U.S.C. § 2253(c).

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge’s M&R. *See* U.S.C. § 636(b)(1); FED R. CIV. P. 72(b); General Order No. 2002-13. Petitioner timely filed objections to the M&R. (D.E. 44).¹ Having carefully reviewed the proposed findings and conclusions of the M&R, the record, the applicable law, and having made a de novo review of the portions of the M&R to which Petitioner’s

¹ Petitioner also filed a premature motion for a certificate of appealability in Docket Entry 45. The Magistrate Judge terminated the premature motion, as the district court had not yet ruled on the M&R at that time, and indicated that the filing should be construed as objections to the Magistrate Judge’s recommendation to grant a certificate of appealability on only a single issue. (D.E. 47). Accordingly, the Court has considered Docket Entry 45 as objections to the M&R (D.E. 33) and overrules those objections to the extent they are contrary to the M&R’s recommendation.

objections were directed, 28 U.S.C. § 636(b)(1), the court **OVERRULES** Petitioner's objections. (D.E. 44).

Accordingly, the Court:

- (1) **ADOPTS** the M&R in its entirety. (D.E. 33).
- (2) Respondent's motion for summary judgment (D.E. 15) is **GRANTED**.
- (3) Petitioner's petition for writ of habeas corpus is **DENIED**. (D.E. 1).
- (4) A certificate of appealability is **GRANTED** only as to the following issue: Whether the state court's denial of Petitioner's ineffective-assistance claim was contrary to, or an unreasonable application of, clearly established federal law where counsel failed to object or seek a curative instruction to the state's questioning about the details of Petitioner's prior drug conviction. *See* (D.E. 33, p. 23).²

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
January 7, 2021

² Petitioner also prematurely filed a notice of appeal (D.E. 46), apparently appealing the M&R before the district court had ruled on it, and before any certificate of appealability had been granted as to any issue in this habeas corpus action. *See* 28 U.S.C. § 2253(c). Petitioner's notice of appeal is considered timely as of the date of this order. *See* FED. R. APP. P. 3(a), 4(a)(1)(A).