



Memorandum and Recommendation of the United States Magistrate Judge entered on March 28, 2019, which is adopted in its entirety as the opinion of this Court, that Respondent's Motion for Summary Judgment (Document No. 19) is GRANTED, and Petitioner's Application for Writ of Habeas Corpus (Document No. 1) is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction. It is further

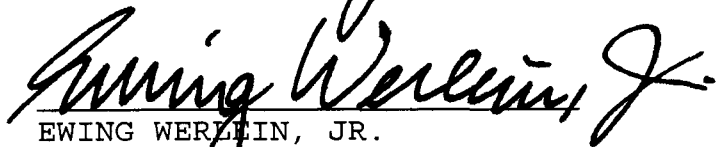
ORDERED that a certificate of appealability is DENIED. A certificate of appealability from a habeas corpus proceeding will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 120 S. Ct. 1595, 1603-1604 (2000) (internal quotations and citations omitted). Stated differently, where the claims have been dismissed on the merits, the petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 1604; Beazley v. Johnson, 242 F.3d 248, 263 (5<sup>th</sup> Cir.), cert. denied, 122 S.Ct. 329 (2001). When the claims have been dismissed on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of constitutional right and that jurists of

reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S. Ct. at 1604. A district court may deny a certificate of appealability *sua sponte*, without requiring further briefing or argument. Alexander v. Johnson, 211 F.3d 895, 898 (5<sup>th</sup> Cir. 2000).

For the reasons set forth in the Memorandum and Recommendation, which has been adopted, as the opinion of the Court, the Court determines that reasonable jurists would not find debatable the jurisdictional determination made herein. Thus, a certificate of appealability is DENIED.

The Clerk will enter this Order and send copies to all parties of record.

Signed at Houston, Texas this 20<sup>TH</sup> day of June, 2019.

  
EWING WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE