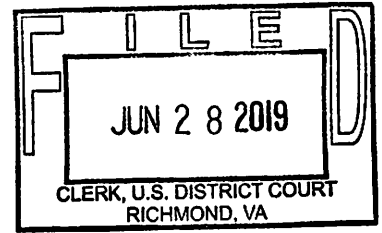


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



MARICHEL PIERCE CLAYBURN,

Petitioner,

v.

Civil Action No. **3:18CV555**

HAROLD W. CLARKE,

Respondent.

MEMORANDUM OPINION

Marichel Pierce Clayburn, a Virginia inmate proceeding *pro se*, filed this petition under 28 U.S.C. § 2254 challenging his convictions in the Circuit Court of the City of Richmond for murder and use of a firearm in the commission of that offense. On May 30, 2019, the Magistrate Judge issued a Report and Recommendation wherein he recommended denying the § 2254 Petition. (ECF No. 31.) The Court advised Clayburn that he could file objections within fourteen (14) days after the entry of the Report and Recommendation. Clayburn has not responded.

“The magistrate [judge] makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court.” *Estrada v. Witkowski*, 816 F. Supp. 408, 410 (D.S.C. 1993) (citing *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). This Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “The filing of objections to a magistrate’s report enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985) (footnote omitted). In the absence of a specific written objection, this Court may adopt a magistrate judge’s

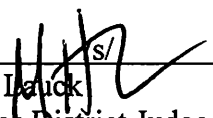
recommendation without conducting a de novo review. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005).

There being no objections, and the Court having determined that the Report and Recommendation is correct on its merits, the Report and Recommendation (ECF No. 31) will be ACCEPTED and ADOPTED. The Motion to Dismiss (ECF No. 22) will be GRANTED and the § 2254 Petition (ECF No. 1) will be DENIED. Clayburn's claims and the action will be DISMISSED.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue unless a prisoner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when "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*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). Because Clayburn fails to make this showing, a certificate of appealability will be DENIED.

An appropriate Order will accompany this Memorandum Opinion.

Date: **JUN 28 2019**
Richmond, Virginia



M. Hannah Leuck
United States District Judge