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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDWIN DAVID CORBETT, Petitioner, v. MARGARET GILBERT, Respondent.	CASE NO. 16-5817-RJB JRC ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING PETITION FOR WRIT OF HABEAS CORPUS AND CERTIFICATE OF APPEALABILITY

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 12. The Court has reviewed the Report and Recommendation, objections, and the remaining file.

Petitioner filed a Petition for a Writ of *Habeas Corpus* pursuant to 28 U.S.C. § 2254 on September 23, 2016, challenging his 2007 conviction for rape of a child in the first degree. Dkt. 1. The Report and Recommendation recommends a denial of his petition as it is untimely and a finding that there are no extraordinary circumstances that require equitable tolling. Dkt. 12. It

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further recommends that a Certificate of Appealability be denied. *Id.* Petitioner filed objections to the Report and Recommendation. Dkts. 13 and 14.

The facts and procedural history are in the Report and Recommendation (Dkt. 12, at 1-2) and are adopted here.

The Report and Recommendation (Dkt. 12) should be adopted and the petition denied as untimely. Petitioner's objections regarding the timeliness of his petition fail to provide any basis to reject the Report and Recommendation. These objections are a repetition of his prior arguments and are addressed in the Report and Recommendation.

Petitioner also objects to the recommendation that a Certificate of Appealability be denied. Dkts. 13 and 14.

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a *habeas* petitioner must make a showing that reasonable jurists could disagree with the district court's resolution of his or her constitutional claims or that jurists could agree the issues presented were adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483–485 (2000) (*quoting Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

A Certificate of Appealability should not issue here. In this case, Petitioner has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). He has not made a showing that reasonable jurists could disagree with this court's resolution of his constitutional claims or that jurists could agree the issues presented were adequate to deserve encouragement to proceed further. *Slack,* at 483-485. The Report and Recommendation's

recommendation that a Certificate of Appealability should not issue here (Dkt. 12) should be adopted.

Accordingly:

- The Court **ADOPTS** the Report and Recommendation (Dkt. 12);
- The Petition for Writ of *Habeas Corpus* (Dkt. 1) is **DENIED**;
- The issuance of a Certificate of Appealability is **DENIED**; and
- This case is **DISMISSED WITH PREJUDICE**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 24th day of January, 2017.

ROBERT J. BRYAN
United States District Judge