APPENDIX A

U.S. Court of Appeals Fifth Circuit Opinion

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 22, 2025
Lyle W. Cayce
Clerk

No. 25-40079

JOSEPH JAMES CRAVER,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*; TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

Respondents—Appellees.

Application for Certificate of Appealability
the United States District Court
for the Eastern District of Texas
USDC No. 2:22-CV-52

ORDER:

Joseph James Craver, Texas prisoner # 02262481, moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 application challenging his three convictions for aggravated sexual assault of a child. The district court denied Craver's § 2254 application upon finding that all of the claims he raised in his application were unexhausted and procedurally barred. In his COA pleadings, Craver admits that his claims are unexhausted but, citing *Martinez v. Ryan*, 566 U.S. 1 (2012), contends that he can overcome the procedural bar because he was not

represented by counsel in connection with his state postconviction proceedings and at least two of his claims have some merit and are substantial.

In order to obtain a COA, Craver must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on procedural grounds, a COA should issue if an applicant establishes, at least, that jurists of reason would find it debatable whether the application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Craver fails to make the required showing. *See id.* Accordingly, his motion for a COA is DENIED. His motion to proceed in forma pauperis on appeal is likewise DENIED.

/s/ James E. Graves, Jr.

JAMES E. GRAVES, JR.
United States Circuit Judge

APPENDIX B

U.S. District Court Magistrate Report & Recommendation,,, Opinion, and Judgment

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

JOSEPH JAMES CRAVER, #02262481	§	
VS.	§	CIVIL ACTION NO. 2:22cv052
DIRECTOR, TDCJ-CID.	§	

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Petitioner Joseph James Craver, a prisoner within the Texas Department of Criminal Justice proceeding *pro se*, filed this federal petition for a writ of habeas corpus challenging a Harrison County conviction. The petition was referred to the undersigned United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

For reasons explained below, the Court recommends that Petitioner Craver's habeas petition be dismissed with prejudice. Finally, the Court recommends that Craver be denied a certificate of appealability *sua sponte*.

I. Procedural Background

On May 8, 2019, after a jury trial, Craver was sentenced to three terms of 99 years' imprisonment for three counts of aggravated sexual assault of a child, (Dkt. #10, pg. 121). He filed a direct appeal, and the appellate court affirmed the judgment and sentence. *See Craver v. State*, 2020 WL 253003 (Tex. App.—Texarkana, pet. ref'd). He filed a petition for discretionary review, which was refused on May 6, 2020, and a motion for rehearing, which was denied on July 22, 2020.

omitted). When reviewing state proceedings, a federal court will not act as a "super state supreme court" to review error under state law. *Wood v. Quarterman*, 503 F.3d 408, 414 (5th Cir. 2007).

Federal habeas review of state court proceedings is governed by the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996. Under the AEDPA, which imposed several habeas corpus reforms, a petitioner who is in custody "pursuant to the judgment of a State court" is not entitled to federal habeas relief with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

> 1. resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established law, as determined by the Supreme Court of the United States; or
>
> 2. resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

28 U.S.C. § 2254(d). The AEDPA imposes a "highly deferential standard for evaluating state court rulings," which demands that federal courts give state court decisions "the benefit of the doubt." *See Renico v. Lett*, 559 U.S. 766, 773 (2010) (internal citations omitted); *see also Cardenas v. Stephens*, 820 F.3d 197, 201-02 (5th Cir. 2016) ("Federal review under the AEDPA is therefore highly deferential: The question is not whether we, in our independent judgment, believe that the state court reached the wrong result. Rather, we ask only whether the state court's judgment was so obviously incorrect as to be an objectively unreasonable resolution of the claim."). Given the highly deferential standard, a state court's findings of fact are entitled to a presumption of correctness and a petitioner can only overcome that burden through clear and convincing evidence. *Reed v. Quarterman*, 504 F.3d 465, 490 (5th Cir. 2007).

To show that trial counsel was ineffective, Craver must demonstrate both deficient performance and ensuing prejudice. *See Strickland v. Washington*, 466 U.S. 668 (1984). In evaluating whether an attorney's conduct was deficient, the question becomes whether the

petition. A state prisoner must exhaust all remedies available in state court before proceeding in federal court unless circumstances exist which render the state corrective process ineffective to protect the prisoner's rights. *See* 28 U.S.C. § 2254(b) & (c). To exhaust properly, a petitioner must "fairly present" all of his claims to the state court. *See Picard v. Connor*, 404 U.S. 270 (1971) ("Accordingly, we have required a state prisoner to present the state courts with the same claim he urges upon the federal court."); *Nobles v. Johnson*, 127 F.3d 409, 420 (5th Cir. 1997). In Texas, all claims must be presented to and ruled on by the Texas Court of Criminal Appeals. *See Richardson v. Procunier*, 762 F.2d 429 (5th Cir. 1985); *Deters v. Collins*, 985 F.2d 789 (5th Cir. 1993). Exhaustion is mandatory.

Here, a review of both Craver's state habeas application, his direct appeal, and his federal petition before this Court illustrates that the claims outlined above were not presented to the Texas Court of Criminal Appeals. Craver admits that he did not exhaust his claims, asserting that "Craver acknowledges that he did not present his claims of ineffective assistance of trial counsel in his state court proceedings," (Dkt. #11, pg. 2). The docket reflects that Craver argued in his petition for discretionary review that (1) the appellate court erred in allowing "harmless" testimony, and (2) the appellate court erred in finding that "percentage of untruthful allegations in child sex abuse victims was harmless," (Dkt. #10, pg. 263).

Additionally, in his state habeas application, Craver raised several claims of trial court error, and that trial counsel was ineffective for (1) failing to ask the trial court to order the State to "make its election at the rest" of their case; (2) failing to object to testimony of Ms. Wisson; (3) failing to object to "State's designation of outcry witness," (Dkt. #10, pg. 319-40). Accordingly, these federal habeas claims—raised for the first time here in federal court—are unexhausted. Craver did not give the state courts an opportunity to address these claims; instead, he bypassed

the state courts and moved to federal court on these claims. *See, e.g.*, *Wenceslao v. Quarterman*, 326 F. App'x 789, 790 (5th Cir. 2009) ("The petitioner must provide the state court a 'fair opportunity to pass upon the claim.'") (citing and quoting *Morris v. Dretke*, 379 F.3d 199, 204 (5th Cir. 2004)).

A petitioner is **not** entitled to a stay for unexhausted claims wherein the state court would find them procedurally barred. *See Neville*, 423 at 780 ("Neville's unexhausted claims are 'plainly meritless' because he is now procedurally barred from raising those claims in state court.") (emphasis added). If state remedies are unavailable, a stay would be inappropriate. *See Slater v. Davis*, 2017 WL 1194574 *5 (S.D. Tex. Mar. 30, 2017) ("A procedural bar precludes consideration of any unexhausted grounds for relief."), *certificate of appealability denied*, 717 F. App'x 432 (5th Cir. 2018) (unpublished).

As Respondent argues, Texas strictly enforces its abuse-of-the-writ doctrine and normally prohibits the filing of successive habeas petitions. *See Fearance v. Scott*, 56 F.3d 633, 642 (5th Cir. 1995) (explaining that the Fifth Circuit has recognized that Texas has strictly and regularly applied the abuse-of-the-writ doctrine). The successive statute states, in pertinent part:

> (a) If a subsequent application for writ of habeas corpus is filed after final disposition of an initial application challenging the same conviction, a court may not consider the merits of or grant relief cased on the subsequent application unless the application contains sufficient specific facts establishing that:
>
> > (1) the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application; or
> >
> > (2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt.

Tex. Code Crim. P. art. 11.07 § 4(a). Stated differently, "Texas courts will not address the merits of unraised claims that could have been brought on initial habeas." *Tong v. Lumpkin*, 90 F.4th 857, 864 (5th Cir. 2024).

Under the same statute, the legal basis of a claim is "unavailable" if the "legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date." *Id.* at § 4(b). Moreover, the factual basis of a claim is unavailable on the date the petitioner's initial habeas application was filed only if "the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date." *Id.* at § 4(c).

Here, Craver's unexhausted claims are those of ineffective assistance of trial counsel. The legal and factual bases for these claims were available to him at the time he filed his initial state habeas application—if not before. *See Neville*, 423 F.3d at 480 (finding that Neville's unexhausted claims were plainly meritless because he was barred from raising them in state court, "Neville had his opportunity to file all of his claims in his first state habeas petition, and failed to do so.").

Like Neville, here, Craver had the opportunity to raise his unexhausted claims in his initial habeas application but did not do so. Importantly, as mentioned, the record shows that Craver raised other claims regarding ineffective assistance of counsel and trial court error in his initial state habeas application that was denied without written order, (Dkt. #10, pg. 335-40)—demonstrating that he could have raised these unexhausted claims then as well. His claims are procedurally barred. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991) (holding that a federal court may excuse a procedural bar if the petition can demonstrate cause or prejudice for the default, or that the court's failure to consider the claims will result in a miscarriage of justice).

B. *Martinez* and *Trevino*

Craver states that the Court should review his unexhausted claims—though procedurally barred—because he was not afforded habeas counsel in state court, citing *Martinez v. Ryan*, 566 U.S. 1 (2012) and *Trevino v. Thaler*, 569 U.S. 413 (2013). *Martinez*, together with *Trevino*, established that a procedural default does not bar federal review of a substantial claim of ineffective assistance of trial counsel if trial counsel in the initial-review collateral proceeding was ineffective.

In *Martinez*, the Supreme Court held that where state law provides that "claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, *there was no counsel* or counsel in that proceeding was ineffective." *Martinez*, 566 U.S. at 17; (emphasis added); *see also Trevino*, 569 U.S. at 428 (recognizing that the "narrow exception" created by *Martinez* applies in Texas, where claims of ineffective assistance of trial counsel are precluded from direct appeal "as a matter of course.").

Here, Craver maintains that because he did not have counsel for his state habeas proceeding, the procedural bar should not apply. But this does not end the analysis. *Martinez* does not require a federal court to excuse a state's procedural default caused by circumstances within the prisoner's control—and neither *Martinez* nor *Trevino* require a state to appoint postconviction counsel, as there is no constitutional right to postconviction counsel. *See Moody v. Lumpkin*, 70 F.4th 884, 891 (5th Cir. 2024) ("We agree with the State that *Martinez* and *Trevino* had no effect on the long-established rule that there is no constitutional right to counsel in postconviction

not a cause," (Dkt. #1, pg. 7). Counsel then used "eight of his peremptory challenges to strike veniremember that were further back in the jury pool," and juror number five ultimately was chosen.

But Craver's mere disagreement with trial counsel's elections on strikes during jury selection does not demonstrate deficient performance and ensuing prejudice. It is well-settled that "[a] conscious and informed decision on trial tactics and strategy cannot be the basis for constitutionally ineffective assistance of counsel unless it is so ill-chosen that it permeates the entire trial with obvious unfairness." *Crane v. Johnson*, 178 F.3d 309, 314 (5th Cir. 1999) (quoting *Garland v. Maggio*, 717 F.2d 199, 206 (5th Cir. 1983)). Counsel's strategic decisions are given heavy deference and should not be second-guessed. *See United States v. Jones*, 287 F.3d 325, 331 (5th Cir. 2002); *see also Yohey v. Collins*, 985 F.2d 222, 228 (5th Cir. 1993) ("Given the almost infinite variety of possible trial techniques and tactics available to counsel, this Circuit is careful not to second-guess legitimate strategic choices."); *Lamb v. Johnson*, 179 F.3d 352, 358 (5th Cir. 1999) ("Informed strategic decisions of counsel are given a heavy measure of deference and will not be second guessed.").

Here, Craver admits that trial counsel used his peremptory strikes on other potential jury members. He presents nothing demonstrating—or even suggesting—that counsel's strategy was so ill-chosen that it permeated the entire trial with obvious unfairness. The Fifth Circuit has squarely held that "acts of counsel conducted during voir dire are generally considered a matter of trial strategy." *Ray v. Johnson*, 196 F.3d 1257 (5th Cir. 1999) (citing *Teague v. Scott*, 60 F.3d 1167, 1172 (5th Cir. 1995)); *Ramirez v. Stephens*, 641 F. App'x 312, 322 (5th Cir. 2016) ("But with respect to deficient performance at voir dire, we have noted that an attorney's actions during voir dire are considered to be a matter of trial strategy.") (internal citation and quotations omitted).

Craver offers nothing to overcome the heavy deference afforded to counsel—as conclusory allegations are insufficient. *See Ross v. Estelle*, 694 F.2d 1008, 1012 (5th Cir. 1993) (per curiam) ("re-emphasiz[ing] that mere conclusory allegations do not raise a constitutional issue in a habeas proceeding."). Craver also fails to show that he was prejudiced, and this claim should be dismissed.

2. Failure to Object to Court's Comment

Craver further contends that trial counsel was ineffective for failing to object to the trial court's "comments on the evidence," when it stated that the victim identified Craver in open court. He insists that it was the "jury's responsibility to determine whether petitioner was identified or not."

Counsel cannot be ineffective for failing to raise a meritless or frivolous objection. *See Turner v. Quarterman*, 481 F.3d 292, 298 (5th Cir. 2007) ("Turner's counsel cannot have rendered ineffective assistance of counsel by failing to make an objection that would have been meritless."); *see also Green v. Johnson*, 160 F.3d 1029, 1037 (5th Cir. 1998) (explaining that "counsel's failure to make a frivolous objection does not cause counsel's performance to fall below an objective level of reasonableness[.]"). Furthermore, in order to show that counsel was ineffective for failing to raise an objection, the petitioner must show that the court would have sustained the objection—or that the failure to object was an unreasonable trial tactic. *See United States v. Oakley*, 827 F.2d 1023, 1025 (5th Cir. 1987) (explaining that counsel's ineffectiveness depends on whether a motion or an objection would have been granted or sustained had it been made."); *see also Burtnett v. Collins*, 982 F.2d 922, 930 (5th Cir. 1993) (holding that the "failure to object to leading questions *and the like* is generally a matter of trial strategy as to which we will not second guess counsel.") (emphasis added).

Here, Craver wholly fails to demonstrate that an objection to the court identifying him in open court after the State corrected the victim who apparently identified Craver as "number three" instead of number four would have been sustained or that the failure to object was an unreasonable trial strategy. Moreover, Craver fails to show prejudice—or that the outcome of the proceedings would have been different had trial counsel objected on this basis. This claim should be dismissed.

3. Failure to Object Use of "Victim"

Craver also asserts that trial counsel was ineffective for failing to object to the State and its witnesses' referring to the complainant as the "victim." He claims that while trial counsel filed a motion in limine, he did not request that the "prosecution and its witnesses be ordered not to refer to the complainant as the victim during the guilt-innocence phase," (Dkt. #1, pg. 10).

As mentioned, the failure to raise a meritless objection or argument is not ineffective assistance. *Turner*, 481 F.3d at 298. While Craver insists that the use of the term "victim" harmed his case, he neither shows that any objection on this basis would have been meritorious nor that he was prejudiced by counsel's failure to object. In fact, "state and federal courts have rejected ineffective assistance claims based on the use of the term 'victim' during trial." *Harris v. Davis*, 2018 WL 11322716, at *4 (S.D. Tex. Apr. 3, 2018) (unpublished); *see also Tollefson v. Stephens*, 2014 WL 7339119, at *5-6 (W.D. Tex. Dec. 23, 2014) (holding that the state court reasonably found that counsel was not ineffective for failing to object to witnesses' use of the term 'victim.'); *Cueva v. State*, 339 S.W.3d 839, 864 (Tex. App.—Corpus Christi-Edinburg 2011, pet. ref'd) (holding that counsel was not ineffective for using the term "victim" and failing to object to its use during trial because the term "is relatively mild and non-prejudicial, especially given that courts have held invocation of far stronger terms did not amount to reversible error."). This claim should be dismissed.

4. Failure to Object to State's Comments During Closing

Finally, Craver maintains that counsel was ineffective for failing to object to the State's comments during closing regarding the victim's "truthfulness." He insists that his "case came down to the credibility of a child complainant," and that it was "obvious" that the complainant was "confused about who abused her."

As an initial matter, Craver does not identify the State's comments that counsel should have objected to. This is fatal to his claims, as his citation to the record is insufficient. Second, given the conclusory nature of this claim, Craver has not shown that any objection would have been meritorious—or that he was prejudiced by the comments or lack of objection. This claim should be dismissed.

VI. Conclusion

Craver's entire petition is unexhausted and procedurally defaulted. He previously raised claims of ineffective assistance of counsel in his state habeas proceeding but failed to raise these particular claims before filing in federal court. Craver has not shown that he was obstructed or prevented from raising these unexhausted claims in his initial state habeas application. The procedural default should not be excused in this case.

Additionally, Craver's claims of ineffective assistance of counsel cannot be characterized as "substantial." For each of his ineffective assistance claims, he fails to show deficient performance, ensuing prejudice, that counsel's trial strategies were unreasonable, or that any objection would have been meritorious. His petition should be dismissed.

VII. Certificate of Appealability

"A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017).

Instead, under 28 U.S.C. § 2253(c)(1), he must first obtain a certificate of appealability ("COA") from a circuit justice or judge. *Id.* Although Petitioner has not yet filed a notice of appeal, the court may address whether he would be entitled to a certificate of appealability. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (A district court may *sua sponte* rule on a certificate of appealability because "the district court that denies a petitioner relief is in the best position to determine whether the petitioner has made a substantial showing of a denial of a constitutional right on the issues before the court. Further briefing and argument on the very issues the court has just ruled on would be repetitious.").

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner need only show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Supreme Court recently emphasized that the COA inquiry "is not coextensive with merits analysis" and "should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Buck*, 137 S. Ct. 773 (quoting *Miller-El*, 537 U.S. at 336). Moreover, "[w]hen the district court denied relief on procedural grounds, the petitioner seeking a COA must further show that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Rhoades v. Davis*, 852 F.3d 422, 427 (5th Cir. 2017) (quoting *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012)).

Here, Craver failed to present a substantial showing of a denial of a constitutional right or that the issues he has presented are debatable among jurists of reason. He also failed to demonstrate

that a court could resolve the issues in a different manner or that questions exist warranting further proceedings. Accordingly, he is not entitled to a certificate of appealability.

RECOMMENDATION

For the foregoing reasons, it is recommended that Petitioner Craver's petition for the writ of habeas corpus be denied—and that the case be dismissed without prejudice. Finally, it is recommended that Petitioner Craver be denied a certificate of appealability *sua sponte*.

Within fourteen (14) days after the receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations, and, except on the grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*) (extending the time to file objections from ten to fourteen days).

SIGNED this 20th day of December, 2024.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JOSEPH JAMES CRAVER, #02262481	§	
VS.	§	CIVIL ACTION NO. 2:22cv052
DIRECTOR, TDCJ-CID.	§	

FINAL JUDGMENT

The Court having considered Petitioner's case and rendered its decision by opinion issued this same date, it is hereby **ORDERED** that Petitioner's habeas proceeding is **DISMISSED WITHOUT PREJUDICE**.

So ORDERED and SIGNED this 22nd day of January, 2025.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JOSEPH JAMES CRAVER, #02262481	§	
VS.	§	CIVIL ACTION NO. 2:22cv052
DIRECTOR, TDCJ-CID.	§	

ORDER OF DISMISSAL

Petitioner Joseph James Craver, a prisoner within the Texas Department of Criminal Justice proceeding *pro se*, filed this federal petition for a writ of habeas corpus challenging a Harrison County conviction. The petition was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On December 23, 2024, Judge Payne issued a Report, (Dkt. #15), recommending that Petitioner's habeas petition be denied, the case be dismissed without prejudice, and that petitioner be denied a certificate of appealability *sua sponte*. Specifically, Judge Payne found that Petitioner's petition is unexhausted and procedurally defaulted—and that the procedural default should not be excused, as his claims of ineffective assistance of counsel cannot be characterized as "substantial." A copy of this Report was sent to Petitioner, and Petitioner filed timely objections, (Dkt. #16).

Petitioner's objections are without merit. Petitioner complains that the state court denied him postconviction counsel, but petitioner does not address the Report explaining that there is no constitutional right to postconviction counsel. *See Moody v. Lumpkin*, 70 F.4th 884, 891 (5th Cir. 2024) ("We agree with the State that *Martinez* and *Trevino* had no effect on the long-established rule that there is no constitutional right to counsel in postconviction proceedings.").

Moreover, while Petitioner states—in a conclusory fashion—that his claims of ineffective assistance of counsel are "substantial" such that his failure to exhaust his state court remedies should be excused, he does not elaborate or address the analyses contained in the Report. *See, e.g.,*

Gonzales v. Collier, 2023 WL 5473699, at *1 & n.2 (S.D. Tex. Aug. 24, 2023) (citing *Aldrich v. Bock*, 327, F. Supp. 2d 743, 747 (E.D. Mich. 2004) ("An objection that does nothing more than state a disagreement with a magistrate [judge's] suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term is used in this context.")). In this way, Petitioner has not identified any error in the Magistrate Judge's Report.

The Court has conducted a careful *de novo* review of the record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner's objections are without merit. Accordingly, it is

ORDERED that the Report and Recommendation of the United States Magistrate Judge, (Dkt. #15), is **ADOPTED** as the opinion of the Court. Petitioner's objections, (Dkt. #16), are **OVERRULED**. It is also

ORDERED that Petitioner's habeas petition is **DENIED** and the above-styled civil action is **DISMISSED** without prejudice. Petitioner is further **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are **DENIED**.

So ORDERED and SIGNED this 22nd day of January, 2025.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE