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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE LUIS KELLY CUEVAS,
Petitioner,
v.
J. SULLIVAN,
Respondent.

No. 1:18-cv-01281-NONE-HBK (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DENY
PETITION FOR WRIT OF HABEAS
CORPUS
(Doc. Nos. 8, 42)

Petitioner Jose Luis Kelly Cuevas is a state prisoner proceeding *in propria persona* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is currently serving a 105-year-to-life term of imprisonment following his conviction, following a 2015 jury trial in the Fresno County Superior Court, on three counts of sexual intercourse or sodomy with a child under the age of ten in violation of California Penal Code § 288.7(a) and two counts of oral copulation or sexual penetration of a child under 10 years of age in violation of California Penal Code § 288.7(b). (Doc. No. 36-12 at 2, 5.) Petitioner appealed from his judgment of conviction and sentence to the California Court of Appeal and the judgment of conviction was affirmed. (Doc. Nos. 36-12.) Thereafter, petitioner sought state habeas relief on grounds of ineffective assistance of counsel and disproportionate sentence, but his application was denied by the California Supreme Court. (Doc. Nos.36-15, 41.) Petitioner now seeks federal habeas relief on the same grounds rejected by the state courts. (Doc. No. 8.)

1 Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302, the instant federal habeas
2 petition was referred to a United States Magistrate Judge. On September 30, 2020, the assigned
3 magistrate judge issued findings and recommendations finding that petitioner had failed to
4 establish prejudice as a result of his counsel’s alleged ineffective assistance and had also failed to
5 demonstrate that the sentence imposed by the state court trial court was grossly disproportionate
6 to his crimes of conviction in violation of the Eighth Amendment. (Doc. No. 42 at 10, 12–14.)
7 Accordingly, it was recommended that the pending petition for federal habeas relief be denied.
8 (*Id.* at 14.) Petitioner has filed timely objections to the findings and recommendations. (Doc. No.
9 43.)

10 The undersigned has reviewed this case *de novo* pursuant to 28 U.S.C. § 636 (b)(1)(B) and
11 Local Rule 304. Based upon that review the undersigned finds the pending findings and
12 recommendations to be supported by the record and proper analysis. In addition, the undersigned
13 also finds that petitioner’s objections fail to meaningfully address or call into question the
14 analysis set forth in the findings and recommendations. Accordingly, the findings and
15 recommendations will be adopted.

16 The court must now turn to whether a certificate of appealability should be issued. A
17 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s
18 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*
19 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of
20 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the
21 petition should have been resolved in a different manner or that the issues presented were
22 ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484
23 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). In the present case, the court
24 finds that reasonable jurists would not find the court’s determination that the petition should be
25 dismissed debatable or wrong, or that petitioner should be allowed to proceed further. Therefore,
26 the court declines to issue a certificate of appealability.

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Accordingly, the court orders as follows:

1. The findings and recommendations issued on September 30, 2020 (Doc. No. 42) are ADOPTED in full;
2. The petition for writ of habeas corpus (Doc. No. 8) is DENIED;
3. The court DECLINES to issue a certificate of appealability; and
4. The Clerk of Court is DIRECTED to assign a district judge to this case for the purposes of closure and to close this case.

IT IS SO ORDERED.

Dated: December 14, 2020



UNITED STATES DISTRICT JUDGE