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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DERNALE THOMPSON,
Petitioner,
v.
DAVID B. LONG, *Warden*,
Respondent.

Case No. ED CV 16-1099 AB (JCG)
**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus (“Petition”), the Magistrate Judge’s Report and Recommendation (“R&R”), Petitioner’s Objections to the Report and Recommendation (“Objections”), and the remaining record, and has made a *de novo* determination.

In his Objections, Petitioner raises one issue that warrants brief discussion here.

Petitioner argues, without citing to any authority, that AEDPA’s one-year limitation period does not apply unless Petitioner has “already had an evidentiary hearing in the State Court,” or “has failed to act with ‘reasonable diligence’ in unsuccessfully attempting to develop[] the claim in the State Court.” (Objections at 2.) Petitioner fails to cite, and the Court cannot find, any support for Petitioner’s

1 contentions. *See Hood v. Galaza*, 47 F. Supp. 2d 1144, 1150 (S.D. Cal. 1999) (noting
2 that AEDPA’s one-year limitation period applies to petitions for writ of habeas corpus
3 filed by state prisoners in federal court after AEDPA’s effective date of April 24,
4 1996).

5 Petitioner’s remaining Objections concern the merits of his habeas claim,
6 which the Court does not address. (*See* Objections at 2-6); *see also Williams v. Beard*,
7 2015 WL 7308656, at *1 n.1 (S.D. Cal. Nov. 19, 2015) (“Petitioner’s Objections
8 include arguments addressing the merits of the Petition. Because the . . . Report and
9 Recommendation [is] based on untimeliness the Court does not address the merits
10 arguments.”)

11 Accordingly, IT IS ORDERED THAT:

- 12 1. The Report and Recommendation is approved and accepted;
- 13 2. Judgment is entered denying the Petition and dismissing this action with
14 prejudice; and
- 15 3. The Clerk serve copies of this Order on the parties.

16 Additionally, for the reasons set forth in the Report and Recommendation and
17 above, the Court finds that Petitioner has not shown that “jurists of reason would find
18 it debatable whether”: (1) “the petition states a valid claim of the denial of a
19 constitutional right”; *and* (2) “the district court was correct in its procedural ruling.”
20 *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a
21 certificate of appealability.

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24 DATED: September 6, 2016



HON. ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT JUDGE