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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,)	1:06-cv-00626 OWW-TAG (HC)
)	
Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS (Doc. 36)
v.)	
)	ORDER GRANTING RESPONDENT’S
ALLEN K. SCRIBNER, Warden, et al.,)	MOTION TO DISMISS PETITION FOR WRIT
)	OF HABEAS CORPUS (Doc. 31)
Respondents.)	
)	ORDER DIRECTING CLERK OF COURT
)	TO ENTER JUDGMENT
_____)		ORDER DECLINING TO ISSUE
		CERTIFICATE OF APPEALABILITY

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 9, 2009, the Magistrate Judge assigned to the case filed findings and recommendations recommending the petition for writ of habeas corpus be dismissed because the petition was untimely. ([Doc. 36](#)). The findings and recommendations were served on all parties and contained notice that any objections were to be filed within twenty days from the date of service of that order. On January 16, 2009, Petitioner filed objections to the findings and recommendations. ([Doc. 37](#)).

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court concludes that the Magistrate Judge’s findings and recommendations are supported by the record and proper analysis. Petitioner's objections present no grounds for

1 questioning the Magistrate Judge's analysis.

2 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
3 district court's denial of his petition, and an appeal is only allowed in certain circumstances.

4 Miller-El v. Cockrell, 537 U.S. 322, 335-336, 123 S. Ct. 1029 (2003). The controlling statute in
5 determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as
6 follows:

7 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district
8 judge, the final order shall be subject to review, on appeal, by the court of appeals for the
9 circuit in which the proceeding is held.

10 (b) There shall be no right of appeal from a final order in a proceeding to test the validity
11 of a warrant to remove to another district or place for commitment or trial a person
12 charged with a criminal offense against the United States, or to test the validity of such
13 person's detention pending removal proceedings.

14 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may
15 not be taken to the court of appeals from--

16 (A) the final order in a habeas corpus proceeding in which the detention
17 complained of arises out of process issued by a State court; or

18 (B) the final order in a proceeding under section 2255.

19 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has
20 made a substantial showing of the denial of a constitutional right.

21 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue
22 or issues satisfy the showing required by paragraph (2).

23 If a federal district court denies a habeas petition, the court may only issue a certificate of
24 appealability when the petitioner makes a substantial showing of the denial of a constitutional
25 right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
26 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
27 been resolved in a different manner or that the issues presented were 'adequate to deserve
28 encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595
(2000) (citation omitted).

29 In the present case, the Court finds that Petitioner has not made the required substantial
30 showing of the denial of a constitutional right to justify the issuance of a certificate of
31 appealability. Reasonable jurists would not find the Court's determination that Petitioner is not
32 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
33 proceed further. Accordingly, the Court DECLINES to issue a certificate of appealability.

34 ///

1 ORDER

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The findings and recommendations filed January 9, 2009 (Doc. 36), are
4 ADOPTED IN FULL;
- 5 2. Respondent's motion to dismiss (Doc. 31), is GRANTED;
- 6 3. The petition for writ of habeas corpus (Doc. 1), is DISMISSED;
- 7 4. The Clerk of Court is DIRECTED to ENTER JUDGMENT for Respondent and to
8 close this case; and
- 9 5. The Court DECLINES to issue a certificate of appealability.

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11
12 IT IS SO ORDERED.

13 Dated: February 9, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE