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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DERRICK MARTIN,)	1:07-cv-00707-LJO-TAG (HC)
)	
Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS
v.)	(Doc. 17)
)	
IVAN D. CLAY, Warden, et al.,)	ORDER DISMISSING PETITION FOR WRIT
)	OF HABEAS CORPUS
Respondents.)	(Doc. 1)
)	
		ORDER DIRECTING CLERK OF COURT TO
		ENTER JUDGMENT
		ORDER DENYING 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 November 13, 2008, the Magistrate Judge assigned to the case filed Findings and Recommendations recommending that the petition for writ of habeas corpus be DISMISSED for Petitioner's failure to comply with 28 U.S.C. § 2244(d)'s one year period of limitation. ([Doc. 17](#)). The Findings and Recommendations were served on Petitioner and contained notice that any objections were to be filed within twenty days from the date of service of that order. On December 8, 2008, Petitioner filed objections to the Magistrate Judge's Findings and Recommendations. ([Doc. 18](#)).

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

1 record and proper analysis. Petitioner's objections present no grounds for questioning the Magistrate
2 Judge's analysis.

3 Moreover, the Court will deny a certificate of appealability. The requirement that a petitioner
4 seek a certificate of appealability is a gate-keeping mechanism that protects the Court of Appeals
5 from having to devote resources to frivolous issues, while at the same time affording petitioners an
6 opportunity to persuade the Court that, through full briefing and argument, the potential merit of
7 claims may appear. Lambright v. Stewart, 220 F.3d 1022, 1025 (9th Cir. 2000). However, a state
8 prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's
9 denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell,
10 537 U.S. 322, 335-336, 123 S. Ct. 1029 (2003).

11 The controlling statute, 28 U.S.C. § 2253, provides as follows:

- 12 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,
13 the final order shall be subject to review, on appeal, by the court of appeals for the circuit in
14 which the proceeding is held.
15 (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a
16 warrant to remove to another district or place for commitment or trial a person charged with a
17 criminal offense against the United States, or to test the validity of such person's detention
18 pending removal proceedings.
19 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not
20 be taken to the court of appeals from--
21 (A) the final order in a habeas corpus proceeding in which the detention
22 complained of arises out of process issued by a State court; or
23 (B) the final order in a proceeding under section 2255.
24 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made
25 a substantial showing of the denial of a constitutional right.
26 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or
27 issues satisfy the showing required by paragraph (2).

28 Accordingly, final orders issued by a federal district court in habeas corpus proceedings are
29 reviewable by the circuit court of appeals, and, in order to have final orders reviewed, a petitioner
30 must obtain a certificate of appealability. This Court will issue a certificate of appealability when a
31 petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C.
32 § 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists
33 could debate whether (or, for that matter, agree that) the petition should have been resolved in a
34 different manner or that the issues presented were 'adequate to deserve encouragement to proceed

1 further.” Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595 (2000)(citation omitted)).

2 In the present case, the Court finds that Petitioner has not made the required substantial
3 showing of the denial of a constitutional right to justify the issuance of a certificate of appealability.
4 Reasonable jurists would not find it debatable that Petitioner has not shown an entitlement to federal
5 habeas corpus relief. Accordingly, the Court will deny the issuance of a certificate of appealability.

6 ORDER

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations filed November 13, 2008 (Doc. 17), are ADOPTED
9 IN FULL;
10 2. The Petition for Writ of Habeas Corpus (Doc. 1) is DISMISSED;
11 3. Issuance of a certificate of appealability is DENIED; and
12 4. The Clerk of Court is DIRECTED to ENTER JUDGMENT for Respondent and close the
13 file.

14 This order terminates the action in its entirety.

15
16 IT IS SO ORDERED.

17 **Dated: February 4, 2009**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE