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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD JASON CALVILLO,)	1:08-cv-00419-OWW-TAG (HC)
)	
Petitioner,)	ORDER ADOPTING FINDINGS AND
)	RECOMMENDATIONS (Doc. 15)
v.)	
)	ORDER DISMISSING PETITION FOR WRIT
D.K. SISTO, et al.,)	OF HABEAS CORPUS (Doc. 1)
)	
Respondents.)	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 the petition for writ of habeas corpus be dismissed as untimely. ([Doc.15](#)). 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, i.e., no later than December 8, 2008. To date, no timely objections to the Findings and Recommendations have been filed.

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, the Court concludes that the Magistrate Judge’s Findings and Recommendations are supported by the record and proper analysis.

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

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

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

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

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

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

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

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

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

27 Accordingly, final orders issued by a federal district court in habeas corpus proceedings
28 are reviewable by the circuit court of appeals, and, in order to have final orders reviewed, a
petitioner must obtain a certificate of appealability. This Court will issue a certificate of
appealability when a petitioner makes a substantial showing of the denial of a constitutional
right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
“reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
been resolved in a different manner or that the issues presented were ‘adequate to deserve
encouragement to proceed further.’” Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595
(2000)(citation omitted).

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

6 ORDER

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations filed November 13, 2008 (Doc. 15), are
9 ADOPTED 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 Respondents and
13 close the file.

14 This order terminates the action in its entirety.

15 IT IS SO ORDERED.

16 **Dated:** February 9, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE