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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 KEITH WIGGINS,

13 Petitioner,

14 v.

15 KEN CLARK, Warden,

16 Respondent.

) 1:08-CV-01036 LJO GSA HC

) ORDER ADOPTING FINDINGS AND  
) RECOMMENDATION  
) [Doc. #18]

) ORDER GRANTING IN PART AND  
) DENYING IN PART RESPONDENT'S  
) MOTION TO DISMISS  
) [Doc. #10]

) ORDER DISMISSING MOTIONS AS MOOT  
) [Doc. #16, 19]

) ORDER DISMISSING PETITION AND  
) DIRECTING CLERK OF COURT TO ENTER  
) JUDGMENT

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

24 On December 15, 2008, the Magistrate Judge issued a [Findings and Recommendation](#) that  
25 recommended Respondent's motion to dismiss for failure to exhaust be DENIED, Respondent's  
26 motion to dismiss for procedural default be GRANTED, and the petition be DISMISSED with  
27 prejudice. The Magistrate Judge further recommended that the Clerk of Court be DIRECTED to  
28 enter judgment. The Findings and Recommendation was served on all parties and contained notice

1 that any objections were to be filed within thirty (30) days of the date of service of the order.

2 On January 12, 2009, Petitioner filed [objections](#) to the Findings and Recommendation.  
3 Petitioner takes issue with the Magistrate Judge's conclusion that he has failed to demonstrate  
4 prejudice excusing his procedural default. This Court agrees with the Magistrate Judge. Petitioner's  
5 claims of error are not of such constitutional dimension as to merit a finding of prejudice excusing  
6 his procedural default. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has  
7 conducted a *de novo* review of the case. Having carefully reviewed the entire file and having  
8 considered the objections, the Court concludes that the Magistrate Judge's Findings and  
9 Recommendation is supported by the record and proper analysis, and there is no need to modify the  
10 Findings and Recommendations based on the points raised in the objections.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Findings and Recommendation issued December 15, 2008, is ADOPTED IN FULL;
- 13 2. Respondent's motion to dismiss is GRANTED IN PART and DENIED IN PART;
- 14 3. The Petition for Writ of Habeas Corpus is DISMISSED WITH PREJUDICE;
- 15 4. Petitioner's motion to file a supplemental petition and his motion to stay are DISMISSED;
- 16 5. The Clerk of Court is DIRECTED to enter judgment; and
- 17 6. As this petition challenges a parole decision, a certificate of appealability is not required.

18 Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir.2005).

19 IT IS SO ORDERED.

20 **Dated: February 3, 2009**

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