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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE L. DELGADILLO,)	1:08-CV-01666 OWW JMD HC
Petitioner,)	ORDER ADOPTING FINDINGS AND
v.)	RECOMMENDATION [Doc. 29]
JAMES E. TILTON,)	ORDER DIRECTING CLERK OF COURT TO
Respondent.)	ENTER JUDGEMENT
)	ORDER DECLINING TO ISSUE
)	CERTIFICATE OF APPEALABILITY
)	ORDER DENYING PETITION FOR WRIT OF
)	HABEAS CORPUS

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

On May 14, 2010, the Magistrate Judge issued a [Findings and Recommendations](#), recommending that the petition for writ of habeas corpus be DENIED with prejudice. The Magistrate Judge further recommended that the Clerk of Court be DIRECTED to enter judgment. The Findings and Recommendations was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order.

Thirty days have since passed and Petitioner has failed to file any objections to the Findings and Recommendation. 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 record and Petitioner's objections, the Court concludes that the Magistrate Judge's Findings and Recommendation, finding that Petitioner is not entitled to habeas corpus relief, is supported by the record and proper analysis.

1 Additionally, the Court notes that a state prisoner seeking a writ of habeas corpus has no
2 absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only allowed
3 in certain circumstances. *Miller-El v. Cockrell*, 123 S.Ct. 1029, 1039 (2003). The controlling
4 statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which
5 provides that a circuit judge or judge may issue a certificate of appealability where “the applicant
6 has made a substantial showing of the denial of a constitutional right.” Where the court denies a
7 habeas petition, the court may only issue a certificate of appealability “if jurists of reason could
8 disagree with the district court’s resolution of his constitutional claims or that jurists could conclude
9 the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 123 S.
10 Ct. at 1034; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the petitioner is not required to
11 prove the merits of his case, he must demonstrate “something more than the absence of frivolity or
12 the existence of mere good faith on his . . . part.” *Miller-El*, 123 S. Ct. at 1040.

13 In the present case, the Court finds that reasonable jurists would not find the Court’s
14 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
15 deserving of encouragement to proceed further. Petitioner has not made the required substantial
16 showing of the denial of a constitutional right. Accordingly, the Court hereby declines to issue a
17 certificate of appealability.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The Findings and Recommendation issued May 14, 2010, is ADOPTED IN FULL
20 with the additional analysis stated above;
- 21 2. The Petition for Writ of Habeas Corpus is DENIED with prejudice;
- 22 3. The Clerk of Court is DIRECTED to enter judgment; and
- 23 4. The Court declines to issue a certificate of appealability.

24 IT IS SO ORDERED.

25 **Dated: June 30, 2010**

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