

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

JOHN THOMAS,

Petitioner,

v.

KERN VALLEY STATE PRISON,

Respondent.

1:08-CV-1397 LJO WMW HC

**ORDER ADOPTING
FINDINGS AND
RECOMMENDATIONS AND
DISMISSING PETITION**

[Doc. [8](#)]

Petitioner, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 . The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On October 21,008, the Magistrate Judge filed findings and recommendations herein. These findings and recommendations were served on the parties and contained notice to the parties that any objections to the findings and recommendations were to be filed within thirty days. Petitioner did not file objections.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)C) this court has conducted a de novo review of this case. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983). Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Petitioner may seek to appeal from the judgment of the court in this case. Petitioner cannot proceed on such an appeal absent a certificate of appealability. The controlling statute, 28 U.S.C. § 2253, provides as follows:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district

1 judge, the final order shall be subject to review, on appeal, by the court of appeals for the
2 circuit in which the proceeding is held.

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

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

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

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

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

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

16 In the present case, the court finds no denial of a constitutional right. Accordingly, a
17 certificate of appealability will be denied.

18 Based on the foregoing, it is HEREBY ORDERED that:

- 19 1. The findings and recommendations issued by the Magistrate Judge on
20 October 21, 2008, are adopted in full;
- 21 2. This petition is DISMISSED without prejudice;
- 22 4. A certificate of appealability is DENIED; and
- 23 5. The Clerk of the Court is directed to enter judgment for Respondent and to close this
24 case.

25 IT IS SO ORDERED.

26 **Dated: January 22, 2009**

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