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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWIGHT TAMPLIN, JR.,  
Petitioner,

v.

WILLIAM MUNIZ,  
Respondent.

No. 1:12-cv-01633-AWI-SKO (HC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS**

[Doc. 86]

**ORDER DENYING MOTION FOR COURT  
ORDER**

[Docs. 84, 85]

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 2, 2020, the Magistrate Judge assigned to the case issued Findings and Recommendation to deny Petitioner’s motion for court order dismissing the state court action with prejudice, or in the alternative, schedule an evidentiary hearing. (Docs. 84, 85, 86.) This Findings and Recommendation was served upon all parties and contained notice that any objections were to be filed within twenty-one (21) days from the date of service of that order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the 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 Recommendation is supported by the record and proper analysis.

1 In addition, the Court declines to issue a certificate of appealability. A state prisoner  
2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of  
3 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537  
4 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of  
5 appealability is 28 U.S.C. § 2253, which provides as follows:

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

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

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

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

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

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

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

22 If a court denies a petitioner’s petition, the court may only issue a certificate of  
23 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.  
24 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that  
25 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
26 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
27 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
28 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial  
showing of the denial of a constitutional right to justify the issuance of a certificate of  
appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not  
entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to

1 proceed further. Thus, the Court DECLINES to issue a certificate of appealability.

2 Accordingly, the Court orders as follows:

- 3 1. The Findings and Recommendations, filed January 2, 2020 (Doc. 86), is  
4 ADOPTED IN FULL;
- 5 2. Petitioner's motions to dismiss the state court action (Docs. 84, 85) are DENIED;
- 6 3. The Court DECLINES to issue a certificate of appealability; and
- 7 4. This case remains CLOSED.

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9 IT IS SO ORDERED.

10 Dated: February 20, 2020

  
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SENIOR DISTRICT JUDGE