

1  
2  
3 **UNITED STATES DISTRICT COURT**  
4 **EASTERN DISTRICT OF CALIFORNIA**  
5

6 CLARENCE LEON DEWS,  
7                    Petitioner,  
8                    v.  
9 MARTIN BITER, Warden of Kern  
10 Valley State Prison,  
11                    Respondent.

Case No. 1:13-cv-00626-AWI-SKO-HC  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS (DOC. 25)  
ORDER DENYING PETITIONER'S MOTION  
FOR RECONSIDERATION (DOC. 24)  
ORDER DECLINING TO ISSUE A  
CERTIFICATE OF APPEALABILITY

12  
13  
14            Petitioner is a state prisoner proceeding pro se and in forma  
15 pauperis with a petition for writ of habeas corpus pursuant to 28  
16 U.S.C. § 2254. The matter has been referred to the Magistrate Judge  
17 pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

18            On August 27, 2013, the Magistrate Judge filed findings and  
19 recommendations that Petitioner's motion for reconsideration of the  
20 Court's dismissal of the petition as a successive petition and  
21 decision not to issue a certificate of appealability. The findings  
22 and recommendations were served on the parties on the same date, and  
23 they informed the parties that objections could be filed within  
24 thirty (30) days of service, and any reply could be filed no later  
25 than fourteen (14) days after service of any objections.

26            Petitioner filed objections on September 17, 2013. No reply  
27 will be filed because Petitioner is the only party who has appeared  
28 in the action.

1           In accordance with the provisions of 28 U.S.C. § 636(b) (1) (C),  
2 this Court has conducted a de novo review of the case. The  
3 undersigned has carefully reviewed the entire file, including  
4 Petitioner's objections, and has considered the objections. The  
5 undersigned has determined there is no need to modify the findings  
6 and recommendations based on the points raised in the objections.  
7 The Court finds that the report and recommendations are supported by  
8 the record and proper analysis.

9           Further, unless a circuit justice or judge issues a certificate  
10 of appealability, an appeal may not be taken to the Court of Appeals  
11 from the final order in a habeas proceeding in which the detention  
12 complained of arises out of process issued by a state court. 28  
13 U.S.C. § 2253(c) (1) (A); Miller-El v. Cockrell, 537 U.S. 322, 336  
14 (2003). A certificate of appealability may issue only if the  
15 applicant makes a substantial showing of the denial of a  
16 constitutional right. § 2253(c) (2). Under this standard, a  
17 petitioner must show that reasonable jurists could debate whether  
18 the petition should have been resolved in a different manner or that  
19 the issues presented were adequate to deserve encouragement to  
20 proceed further. Miller-El v. Cockrell, 537 U.S. at 336 (quoting  
21 Slack v. McDaniel, 529 U.S. 473, 484 (2000)). A certificate should  
22 issue if the Petitioner shows that jurists of reason would find it  
23 debatable whether the petition states a valid claim of the denial of  
24 a constitutional right or that jurists of reason would find it  
25 debatable whether the district court was correct in any procedural  
26 ruling. Slack v. McDaniel, 529 U.S. at 483-84.

27           In determining this issue, a court conducts an overview of the  
28 claims in the habeas petition, generally assesses their merits, and

1 determines whether the resolution was wrong or debatable among  
2 jurists of reason. Id. It is necessary for an applicant to show  
3 more than an absence of frivolity or the existence of mere good  
4 faith; however, it is not necessary for an applicant to show that  
5 the appeal will succeed. Miller-El v. Cockrell, 537 U.S. at 338.

6 A district court must issue or deny a certificate of  
7 appealability when it enters a final order adverse to the applicant.  
8 Rule 11(a) of the Rules Governing Section 2254 Cases. Here, it does  
9 not appear that reasonable jurists could debate whether the petition  
10 should have been resolved in a different manner. Petitioner has not  
11 made a substantial showing of the denial of a constitutional right.  
12 Accordingly, the Court will decline to issue a certificate of  
13 appealability with respect to the Court's ruling on Petitioner's  
14 motion for reconsideration.

15 Accordingly, it is ORDERED that:

16 1. The findings and recommendations filed on August 27, 2013,  
17 are ADOPTED in full; and

18 2. The Petitioner's motion for reconsideration of the  
19 dismissal of the petition and decision not to issue a certificate of  
20 appealability is DENIED; and

21 3. The Court DECLINES to issue a certificate of appealability.  
22  
23

24 IT IS SO ORDERED.

25 Dated: September 27, 2013

  
26 SENIOR DISTRICT JUDGE  
27  
28