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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOHN MONTUE,  
Petitioner,  
v.  
STU SHERMAN, Warden,  
Respondent.

Case No. 1:14-CV-01231-AWI-SMS HC  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS RECOMMENDING  
THAT THE COURT DENY PETITIONER'S  
MOTION FOR RECONSIDERATION  
  
(Docs. 39, 41, and 42)

Petitioner John Montue is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner contended that the parole board denied his due process rights by failing to grant him parole. On January 9, 2015, the Court adopted findings and recommendations recommending that the petition be dismissed and entered judgment against Petitioner. Doc. 37. On January 23, 2015, Petitioner moved for reconsideration. Doc. 39. Petitioner amended the motion on February 9, 2015. Doc. 41.

The motion was referred to United States Magistrate Judge Sandra M. Snyder pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304. On February 12, 2015, the Magistrate Judge filed findings and recommendations recommending that the Court deny the motion for reconsideration.

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1 The findings and recommendations were served on the parties and contained notice that any  
2 objections to the findings and recommendations were to be served within thirty days. Petitioner filed  
3 a request for judicial notice on February 19, 2015 (Doc. 43), and objections on March 10, 2015  
4 (Doc. 44), restating his argument that the parole board had violated his constitutional rights by  
5 denying him parole.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de*  
7 *novo* review of this case. Having carefully reviewed the entire file, the Court concludes that the  
8 findings and recommendations are supported by the record and proper analysis.  
9

### 10 CERTIFICATE OF APPEALABILITY

11 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district  
12 court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v. Cockrell*,  
13 537 U.S. 322, 335-36 (2003). In a proceeding under 28 U.S.C. § 2255, an applicant may not appeal  
14 a District Court judgment unless the District Judge or a Circuit Judge issues a certificate of  
15 appealability under 28 U.S.C. § 2253(c). F.R.App.P. 22(b). Section 2253(c) provides:  
16

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

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

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

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

25 (3) The certificate of appealability under paragraph (1) shall indicate  
26 which specific issues or issues satisfy the showing required by paragraph  
27 (2).

28 If a court denies a petitioner's petition, the court may only issue a certificate of appealability  
"if jurists of reason could disagree with the district court's resolution of his constitutional claims or  
that jurists could conclude the issues presented are adequate to deserve encouragement to proceed

1 further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Although the  
2 petitioner is not required to prove the merits of his case, he must demonstrate "something more than  
3 the absence of frivolity or the existence of mere good faith on his . . . part." *Miller-El*, 537 U.S. at  
4 338.

5 In the present case, the Court finds that reasonable jurists would not find the Court's  
6 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
7 deserving of encouragement to proceed further.

8  
9 **CONCLUSION AND ORDER**

10 Accordingly, IT IS HEREBY ORDERED that the findings and recommendations, filed  
11 February 12, 2015, are adopted in full. The Court DECLINES to issue a certificate of appealability.

12  
13 IT IS SO ORDERED.

14 Dated: April 8, 2015

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17 SENIOR DISTRICT JUDGE