

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT CARRILLO, JR.,
Petitioner,
v.
DANIEL PARAMO,
Respondent.

Case No. 1:15-cv-00637-AWI-SAB-HC
ORDER ADOPTING FINDINGS AND
RECOMMENDATION (ECF No. 6)
ORDER DISMISSING PETITION AS
DUPLICATIVE
ORDER DIRECTING CLERK OF COURT TO
CLOSE CASE

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

On May 15, 2015, the Magistrate Judge issued a Findings and Recommendation that recommended that the petition be dismissed as duplicative. On May 15, 2015, the Findings and Recommendation was served on Petitioner and contained notice that any objections were to be filed within thirty (30) days after being served with this Findings and Recommendation. Over thirty (30) days have passed, and Petitioner has not filed any objections.

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 entire file, the Court concludes that the Magistrate Judge's Findings and Recommendation is supported by the record and proper analysis, and there is no need to modify the Findings and Recommendation.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a

1 district court’s denial of his petition, and an appeal is only allowed in certain circumstances.
2 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining
3 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

4 (a) In a habeas corpus proceeding or a proceeding under section
5 2255 before a district judge, the final order shall be subject to
6 review, on appeal, by the court of appeals for the circuit in which
7 the proceeding is held.

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

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

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

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

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

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

26 If a court denies a petitioner’s petition, the court may only issue a certificate of
27 appealability “if jurists of reason could disagree with the district court’s resolution of his
28 constitutional claims or that jurists could conclude the issues presented are adequate to deserve
encouragement to proceed further.” Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473,
484 (2000). While the petitioner is not required to prove the merits of his case, he must
demonstrate “something more than the absence of frivolity or the existence of mere good faith on
his . . . part.” Miller-El, 537 U.S. at 338.

In the present case, the Court finds that 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 proceed further. Petitioner has not made the required substantial

1 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to
2 issue a certificate of appealability.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The Findings and Recommendation issued May 15, 2015, is ADOPTED IN FULL;
- 5 2. The petition for writ of habeas corpus is DISMISSED as duplicative;
- 6 3. The Clerk of Court is DIRECTED to close the case; and
- 7 4. The Court DECLINES to issue a certificate of appealability.

8
9 IT IS SO ORDERED.

10 Dated: July 16, 2015



11 SENIOR DISTRICT JUDGE

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28