

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 DAVID HAWK,
12
13 Petitioner,
14 v.
15 DAVID DAVEY,
16 Respondent.

No. 1:16-cv-0795 JLT EPG (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATION, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY
(Doc. 60)

17
18 David Hawk is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus
19 pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge
20 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

21 The magistrate judge issued Findings and Recommendations, recommending that the
22 petition be denied. (Doc. 60.) The Court served the Findings and Recommendations on the
23 parties with a notice that any objections were to be filed within 30 days of the date of service.
24 (*Id.* at 54-55.) In addition, the Court warned Petitioner that the “failure to file objections within
25 the specified time may waive the right to appeal the District Court’s order.” (*Id.* at 55, citing
26 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).) To date, no objections have been filed,
27 and the time for doing so has passed.

28 Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court performed a *de novo* review of the case.

1 Having carefully reviewed the entire matter, the Court concludes the Findings and
2 Recommendations are supported by the record and proper analysis.

3 Having found that Petitioner is not entitled to habeas relief, the Court turns to whether a
4 certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
5 absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
6 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C.
7 § 2253. If a court denies a habeas petition on the merits, the Court may only issue a certificate of
8 appealability “if jurists of reason could disagree with the district court’s resolution of [the
9 petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate
10 to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529
11 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he must
12 demonstrate “something more than the absence of frivolity or the existence of mere good faith on
13 his . . . part.” *Miller-El*, 537 U.S. at 338.

14 The Court finds that reasonable jurists would not find the determination that the petition
15 should be denied debatable or wrong, or that Petitioner should be allowed to proceed further.
16 Petitioner has not made the required substantial showing of the denial of a constitutional right.
17 Therefore, the Court declines to issue a certificate of appealability. Accordingly, the Court

18 **ORDERS:**

- 19 1. The Findings and Recommendations issued on October 12, 2023 (Doc. 60) are
20 **ADOPTED IN FULL.**
- 21 2. The petition for writ of habeas corpus is **DENIED.**
- 22 3. The Clerk of Court is directed to close the case.
- 23 4. The Court declines to issue a certificate of appealability.

24
25 IT IS SO ORDERED.

26 Dated: **December 7, 2023**


UNITED STATES DISTRICT JUDGE