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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

YACUB AVICENNA MCCLENDON,
Petitioner,
v.
DEBBIE ASCUNCION,
Respondent.

No. 1:17-cv-00030-DAD-MJS

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PETITION AS SUCCESSIVE

(Doc. No. 6)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On May 12, 2017, the assigned magistrate judge issued findings and recommendations recommending the petition for writ of habeas corpus be dismissed on the ground it is a second or successive petition and petitioner had not obtained leave from the Ninth Circuit Court of Appeals to proceed with such a petition. (Doc. No. 6.) The findings and recommendations were served on petitioner with notice that any objections thereto were to be filed within thirty (30) days of the date of service of the findings and recommendations. Petitioner has filed no objections and the time for doing so has passed.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has
2 conducted a *de novo* review of the case. Having carefully reviewed the entire file, the
3 undersigned concludes that the magistrate judge’s findings and recommendations are supported
4 by the record and proper analysis.

5 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court’s denial of his petition, and an appeal is only allowed in certain circumstances.
7 *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003). Specifically, the federal rules governing
8 habeas cases brought by state prisoners require a district court issuing an order denying a habeas
9 petition to either grant or deny therein a certificate of appealability. *See* Rules Governing § 2254
10 Case, Rule 11(a). A judge shall grant a certificate of appealability “only if the applicant has made
11 a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and the
12 certificate must indicate which issues satisfy this standard. 28 U.S.C. § 2253(c)(3). “Where a
13 district court has rejected the constitutional claims on the merits, the showing required to satisfy
14 § 2253(c) is straightforward: [t]he petitioner must demonstrate that reasonable jurists would find
15 the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v.*
16 *McDaniel*, 529 U.S. 473, 484 (2000). Additionally, for claims denied on procedural grounds, a
17 certificate of appealability should issue “when the prisoner shows, at least, that jurists of reason
18 would find it debatable whether the petition states a valid claim of the denial of a constitutional
19 right and that jurists of reason would find it debatable whether the district court was correct in its
20 procedural ruling.” *Id.* Here, petitioner has not made such a showing. Accordingly, a certificate
21 of appealability will not be issued.

22 For these reasons:

- 23 1. The findings and recommendations issued May 12, 2017 (Doc. No. 6) are adopted in full;
- 24 2. The petition for writ of habeas corpus is dismissed as successive;

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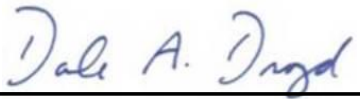
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- 3. The Clerk of the Court is directed to close the case; and
- 4. The court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: August 16, 2017


UNITED STATES DISTRICT JUDGE