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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES LAWTON,
Petitioner,
v.
WILLIAM MUNIZ, Warden,
Respondent.

Case No. 1:17-cv-00737-DAD-HBK (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PETITION
(Doc. No. 40)

Petitioner Charles Lawton is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 9.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On July 31, 2020, the assigned magistrate judge issued findings and recommendations, recommending that each of petitioner’s claims for federal habeas relief be rejected, that his request for an evidentiary hearing be denied and that the pending petition be denied on the merits. (Doc. No. 40.) The pending findings and recommendations were served on petitioner with notice that any objections thereto were to be filed within thirty (30) days of service. (*Id.* at 24.) To date, no objections have been filed, and the time in which to do so has now passed.

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

4 In addition, having concluded that the pending petition must be dismissed, the court now
5 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of
6 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an
7 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
8 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds
9 without reaching the underlying constitutional claims, the court should issue a certificate of
10 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
11 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
12 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
13 In the present case, the court finds that reasonable jurists would not find the court's determination
14 that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to
15 proceed further. Therefore, the court declines to issue a certificate of appealability.

16 Accordingly,

- 17 1. The findings and recommendations issued on July 31, 2020 (Doc. No. 40) are adopted in
18 full;
- 19 2. The petition for writ of habeas corpus (Doc. No. 9) is dismissed;
- 20 3. The court declines to issue a certificate of appealability; and
- 21 4. The Clerk of the Court is directed to close this case.

22 IT IS SO ORDERED.

23 Dated: December 14, 2020

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UNITED STATES DISTRICT JUDGE