

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

DEONTRAY THOMAS,  
Petitioner,  
v.  
PEOPLE OF THE STATE OF CALIFORNIA,  
Respondent.

No. 1:17-cv-01546-SKO HC  
**FINDINGS AND RECOMMENDATIONS  
FOR DISMISSAL OF PETITIONER FOR  
FAILURE TO OBEY A COURT ORDER**  
**COURT CLERK TO ASSIGN DISTRICT  
JUDGE**  
**(Doc. 1)**

On November 13, 2017, Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred the matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304. Upon review of the petition, the Court discovered that Petitioner (1) did not name an appropriate Respondent; (2) alleged violations based on California state law, rather than alleging violations of his constitutional rights; and (3) did not clearly set forth whether he exhausted his claims.

On December 5, 2017, the Court ordered Petitioner to file an amended complaint within 30 days. Although more than 30 days have passed, Petitioner has neither filed an amended complaint, nor responded to the Court’s order in any way.

1 The Court has the discretion to impose any and all sanctions authorized by statute or rule  
2 or within the inherent power of the Court, including dismissal of an action based on Petitioner's  
3 failure to comply with a court order. Fed .R. Civ. P. 11; Local R. 110.

4 **Certificate of Appealability**

5 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a  
6 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*  
7 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a  
8 certificate of appealability is 28 U.S.C. § 2253, which provides:  
9

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

13 (b) There shall be no right of appeal from a final order in a proceeding to  
14 test the validity of a warrant to remove to another district or place for  
15 commitment or trial a person charged with a criminal offense against the  
16 United States, or to test the validity of such person's detention pending  
17 removal proceedings.

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

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

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

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

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

If a court denies a habeas 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

1 or that jurists could conclude the issues presented are adequate to deserve encouragement to  
2 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

3 Although the petitioner is not required to prove the merits of his case, he must demonstrate  
4 "something more than the absence of frivolity or the existence of mere good faith on his . . .  
5 part." *Miller-El*, 537 U.S. at 338.  
6

7 In the present case, the Court finds that reasonable jurists would not find the Court's  
8 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
9 deserving of encouragement to proceed further. Accordingly, the Court recommends declining to  
10 issue a certificate of appealability.

#### 11 Recommendation

12 Based on the foregoing, the undersigned hereby recommends that the Court dismiss the  
13 petition in this action without prejudice for failure to obey a court order and decline to issue a  
14 certificate of appealability.  
15

16 These Findings and Recommendations will be submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty**  
18 **(30) days** after being served with these Findings and Recommendations, either party may file  
19 written objections with the Court. The document should be captioned "Objections to Magistrate  
20 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and  
21 filed within **fourteen (14) days** after service of the objections. The parties are advised that failure  
22 to file objections within the specified time may constitute waiver of the right to appeal the District  
23 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v.*  
24 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).  
25

26 The Court Clerk is hereby directed to assign a district judge to this action.  
27

28 IT IS SO ORDERED.

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

Dated: January 9, 2018

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE