# UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA 

## ANTHONY SPALDING,

Petitioner,
v.

WARDEN HATTON,
Respondent.

No. 1:18-cv-01246-DAD-JDP (HC)
ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DENYING PETITION FOR WRIT OF HABEAS CORPUS, DIRECTING CLERK OF COURT TO CLOSE CASE, AND DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY
(Doc. No. 18)

Petitioner Anthony Spalding 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. This matter was referred to the assigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

On March 16, 2020, the magistrate judge issued findings and recommendations recommending that the court deny the pending petition for federal habeas relief with respect to petitioner's sole claim that the state trial court erred in failing to give the jury at his trial a lesser included offense instruction. (Doc. No. 18.) The magistrate judge concluded that to the extent petitioner's claim was based on the assertion that such an instruction was required under state law, it was not cognizable on federal habeas review. (Id. at 5.) The magistrate judge also concluded that petitioner had no federal constitutional right to a lesser-included offense instruction and, even if he did, any such error was harmless in this case. (Id.) The findings and
recommendations were served on petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days of the date of service. (Id. at 6.) To date, petitioner has filed no objections to the findings and recommendations, and the time for doing so has passed.

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 findings and recommendations are supported by the record and proper analysis.

A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). Specifically, the federal rules governing habeas cases brought by state prisoners require a district court issuing an order denying a habeas petition to either grant or deny therein a certificate of appealability. See Rules Governing § 2254 Case, Rule 11(a). A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and the certificate must indicate which issues satisfy this standard. 28 U.S.C. § 2253(c)(3). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: [t ]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Here, petitioner has not made such a showing. Accordingly, a certificate of appealability will not be issued.

Accordingly,

1. The findings and recommendations issued March 16, 2020 (Doc. No. 18) are adopted in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is denied;
3. The court declines to issue a certificate of appealability; and
4. The Clerk of Court is directed to close the case.

## IT IS SO ORDERED.

## Dated: April 20, 2020



