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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMIE GOMEZ,
Petitioner,
v.
SCOTT KERNANA,
Respondent.

No. 1:18-cv-01425-NONE-HBK (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, REQUEST FOR EVIDENTIARY
HEARING, AND REQUEST FOR
APPOINTMENT OF COUNSEL
(Doc. Nos. 1, 23)

Petitioner Jamie Gomez is a state prisoner proceeding without counsel on his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In January 2015, petitioner was sentenced in the Kern County Superior Court to 22 years and eight months of imprisonment following his convictions for carjacking, second degree robbery, false imprisonment, making a criminal threat, reckless evasion of a peace officer, and resisting a peace officer following a jury trial. (Doc. Nos. 12-1; 12-2 at 1.) After petitioner unsuccessfully sought habeas relief from the California Court of Appeal and California Supreme Court, petitioner sought federal habeas relief based on the alleged violation of his Sixth Amendment right to confrontation, as well as for an evidentiary hearing with respect to that claim and the appointment of counsel, and. (Doc. No. 1 at 5, 18.)

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302, the instant habeas petition was referred to a United States Magistrate Judge. On September 30, 2020, the previously assigned magistrate judge found that the California Court of Appeal properly denied petitioner’s state

1 habeas petition on the ground that any error in the admission of challenged testimony at
2 petitioner’s trial was harmless error and recommended that the instant habeas petition be denied.
3 (Doc. No. 23 at 8–10.) The magistrate judge further found that there was no legal basis to hold an
4 evidentiary hearing or appoint counsel to petitioner. (*Id.* at 11–12.) Petitioner has filed
5 objections to the findings and recommendations. (Doc. No. 24.)

6 In accordance with 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, the undersigned has
7 reviewed this case *de novo* and finds the pending findings and recommendations to be supported
8 by the record and proper analysis. Petitioner’s objections fail to meaningfully address the
9 magistrate judge’s reasoning and cited authorities. The undersigned will therefore adopt the
10 findings and recommendations.

11 The court must now turn to whether a certificate of appealability should be issued. A
12 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s
13 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*
14 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of
15 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the
16 petition should have been resolved in a different manner or that the issues presented were
17 ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484
18 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). In the present case, the court
19 finds that reasonable jurists would not find the court’s determination that the petition should be
20 dismissed debatable or wrong, or that petitioner should be allowed to proceed further. Therefore,
21 the court declines to issue a certificate of appealability.

22 Accordingly, the court orders as follows:

- 23 1. The findings and recommendations issued on September 30, 2020 (Doc. No. 23) are
24 ADOPTED in full;
- 25 2. The petition for writ of habeas corpus (Doc. No. 1) is DENIED;

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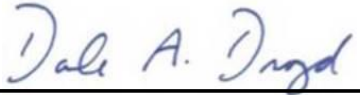
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- 3. The court DECLINES to issue a certificate of appealability; and
- 4. The Clerk of Court is DIRECTED to assign a district judge to this case for the purposes of closure and to close this case.

IT IS SO ORDERED.

Dated: December 14, 2020


UNITED STATES DISTRICT JUDGE