



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

5 In his objections, petitioner reiterates arguments that had already been addressed in the  
6 pending findings and recommendations. (Doc. No. 34.) The only arguably new assertion by  
7 petitioner in his objections is his argument that he was prejudiced by the withdrawal of his not  
8 guilty by reason of insanity (“NGI”) defense in state court because it would not have failed  
9 despite California Penal Code § 29.8, which provides that the defense “shall not be found by the  
10 trier of fact solely on the basis of a[n] . . . addiction to, or abuse of, intoxicating substances.”  
11 (Doc. No. 34 at 13.) Petitioner now argues that his NGI defense was not only supported by his  
12 methamphetamine-induced psychosis but also allegedly by a speech impediment and injuries he  
13 sustained from a car accident. (Doc. No. 34 at 13.) Aside from the fact that petitioner 1) fails to  
14 explain how a speech impediment and injuries sustained from a car accident contributed to his  
15 alleged insanity, and 2) withdrew his NGI plea in open court (Doc. No. 28 at 33), the state court’s  
16 determination that petitioner’s NGI plea could not be supported under California law is binding  
17 on this court. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (“[I]t is not the province of a  
18 federal habeas court to reexamine state-court determinations on state-law questions.”) (*See* Doc.  
19 No. 28 at 25.) Therefore, the undersigned concludes that petitioner’s objections present no  
20 grounds for questioning the magistrate judge’s analysis.

21 Having found that petitioner is not entitled to habeas relief, the court now turns to whether  
22 a certificate of appealability should issue. A prisoner seeking a writ of habeas corpus has no  
23 absolute entitlement to appeal a district court’s denial of his petition, as an appeal is only allowed  
24 under certain circumstances. *See* 28 U.S.C. § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-336  
25 (2003). Moreover, Rule 11 of the Rules Governing Section 2254 Cases requires that a district  
26 court issue or deny a certificate of appealability when entering a final order adverse to a  
27 petitioner. *See also* Ninth Circuit Rule 22-1(a).

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1 If, as here, a court denies a petition for a writ of habeas corpus, the court may only issue a  
2 certificate of appealability when “the applicant has made a substantial showing of the denial of a  
3 constitutional right.” 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must  
4 establish that “reasonable jurists could debate whether (or, for that matter, agree that) the petition  
5 should have been resolved in a different manner or that the issues presented were ‘adequate to  
6 deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)  
7 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

8 In the present case, the court concludes that petitioner has not made the required  
9 substantial showing of the denial of a constitutional right to justify the issuance of a certificate of  
10 appealability. Reasonable jurists would not find the court’s determination that petitioner is not  
11 entitled to federal habeas corpus relief wrong or debatable, and they would not conclude that  
12 petitioner is deserving of encouragement to proceed further. The court therefore declines to issue  
13 a certificate of appealability.

14 Accordingly:

- 15 1. The findings and recommendations filed on November 22, 2019 (Doc. No. 28) are  
16 adopted in full;
- 17 2. The petition for writ of habeas corpus (Doc. No. 1) is denied;
- 18 3. The Clerk of the Court is directed to close this case; and
- 19 4. The court declines to issue a certificate of appealability.

20 IT IS SO ORDERED.

21 Dated: April 9, 2020

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24 UNITED STATES DISTRICT JUDGE  
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