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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD VICTOR ESCALON,
Petitioner,
v.
K.V.S.P. WARDEN,
Respondent.

No. 1:19-cv-00722-NONE-SAB (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS DISMISSING FIRST
AMENDED PETITION FOR WRIT OF
HABEAS CORPUS
(Doc. No. 22)

Petitioner is a state prisoner proceeding pro se seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On January 27, 2020, the assigned magistrate judge issued findings and recommendations recommending that petitioner’s first amended petition be denied on its merits and in its entirety. (Doc. No. 22.) The findings and recommendations were served on petitioner and contained notice that any objections thereto were due within 30 days. (*Id.* at 20.) Petitioner failed to file objections and the time to do so has passed.

In accordance with the provisions of § 636 (b)(1)(B) and Local Rule 304, the court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and proper analysis.

Having concluded that the pending petition must be denied, the court now turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of habeas

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

14 Accordingly:

- 15 1. The findings and recommendations issued on January 27, 2020 (Doc. No. 22) are
16 adopted;
- 17 2. The first amended petition for writ of habeas corpus (Doc. No. 17) is dismissed in its
18 entirety;
- 19 3. The court declines to issue a certificate of appealability; and
- 20 4. The Clerk of Court is directed to assign a district judge to this case for the purpose of
21 closing the case and to close the case.

22 IT IS SO ORDERED.

23 Dated: April 1, 2020

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26 UNITED STATES DISTRICT JUDGE
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