

1 In his objections, petitioner essentially argues that he is entitled to pursue relief under §
2 2241 because he was unable to obtain relief under § 2255, which he argues is unconstitutional.
3 (See Doc. No. 6.) However, as the magistrate judge pointed out, petitioner’s claims involve facts
4 that he either knew or should have known at the time he pursued direct appellate review of his
5 conviction or relief under § 2255. (Doc. No. 5.) Petitioner has not shown that he was precluded
6 from presenting those claims—as he admits himself, his claims have already been reviewed by
7 the District Courts for the Eastern District of Wisconsin and the Eastern District of Kentucky, as
8 well as the Courts of Appeals for the Sixth and Seventh Circuits, all of which rejected them. (See
9 Doc. Nos. 5–6.)

10 In addition, petitioner has failed to make a showing of actual innocence; his petition, like
11 his previous ones, only argues that his conviction is defective because of legal insufficiency and
12 procedural error. See *Luedtke v. Ives*, No. 7:11-CV-00080-HRW, 2012 WL 11027, at *2 (E.D.
13 Ky. Jan. 3, 2012), *aff’d* (Mar. 27, 2014) (noting the “overwhelming evidence” against the
14 petitioner). As a result, petitioner has provided this court no basis to grant his petition for habeas
15 relief under § 2241.

16 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
17 a certificate of appealability should issue. A prisoner seeking a writ of habeas corpus has no
18 absolute entitlement to appeal a district court’s denial of his petition, as an appeal is only allowed
19 under certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-336 (2003); 28 U.S.C. §
20 2253. A successive petition under 28 U.S.C. § 2255 that is disguised as a § 2241 petition also
21 requires a certificate of appealability. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008);
22 *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). If, as here, a court denies a petition for a
23 writ of habeas corpus, the court may only issue a certificate of appealability when “the applicant
24 has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
25 To make a substantial showing, the petitioner must establish that “reasonable jurists could debate
26 whether (or, for that matter, agree that) the petition should have been resolved in a different
27 manner or that the issues presented were ‘adequate to deserve encouragement to proceed

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1 further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
2 880, 893 (1983)).

3 In the present case, the court concludes that petitioner has not made the required
4 substantial showing of the denial of a constitutional right to justify the issuance of a certificate of
5 appealability. Reasonable jurists would not find the court’s determination that petitioner is not
6 entitled to federal habeas corpus relief wrong or debatable, or that petitioner is not deserving of
7 encouragement to proceed further. Therefore, the court declines to issue a certificate of
8 appealability.

9 Accordingly:

- 10 1. The findings and recommendations filed on September 3, 2019, (Doc. No. 5), are
11 adopted in full;
- 12 2. The petition for writ of habeas corpus, (Doc. No. 1), is dismissed with prejudice
13 for lack of jurisdiction;
- 14 3. The Clerk of Court is directed to enter judgment and close the file; and,
- 15 4. The court declines to issue a certificate of appealability.

16 IT IS SO ORDERED.

17 Dated: November 19, 2019

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20 UNITED STATES DISTRICT JUDGE