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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON CARL SUTTER,
Petitioner,
v.
J. GASTELO, Warden,
Respondent.

No. 1:19-cv-01091-DAD-SKO (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PETITION FOR WRIT OF HABEAS
CORPUS
(Doc. No. 18)

Petitioner Brandon Carl Sutter 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. The 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 13, 2020, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be denied on the merits. (Doc. No. 18.) Specifically, the magistrate judge found that both of the grounds for federal habeas relief asserted in petitioner’s pending petition—(1) that the evidence was insufficient to support his state court conviction; and (2) that his trial counsel rendered ineffective assistance in several instances—fail on their merits. (*Id.* at 5, 13.) Those findings and recommendations were served on all parties and contained notice that any objections thereto were to be filed within thirty (30) days from the date of service. (*Id.* at 13.) After seeking and receiving an extension of time to do so, petitioner filed objections to the pending findings and recommendations on January 25, 2020. (Doc. Nos. 20, 22.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
2 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
3 including petitioner’s objections, the court finds the findings and recommendations to be
4 supported by the record and proper analysis.

5 In his objections, petitioner does not meaningfully dispute the magistrate judge’s finding
6 that both of the grounds for federal habeas relief he asserts fail on the merits. The pending
7 findings and recommendations lay out the standards of review for each of the asserted grounds
8 and explains why the pending petition falls short of satisfying those standards for the granting of
9 relief. Petitioner’s objections do not dispute or even address these standards. Rather, petitioner
10 merely reiterates arguments that had already been addressed in the pending findings and
11 recommendations. (Doc. No. 22 at 3–5.) After reviewing the relevant legal standards and
12 applying those standards to petitioner’s claims of insufficient evidence and ineffective assistance
13 of counsel, the magistrate judge properly concluded that federal habeas corpus relief was
14 unavailable to petitioner in connection with those claims. (*Id.*)

15 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
16 a certificate of appealability should issue. A prisoner seeking a writ of habeas corpus has no
17 absolute entitlement to appeal a district court’s denial of his petition, as an appeal is only allowed
18 under certain circumstances. 28 U.S.C. § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-336
19 (2003). In addition, Rule 11 of the Rules Governing Section 2254 Cases requires that a district
20 court issue or deny a certificate of appealability when entering a final order adverse to a
21 petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th
22 Cir. 1997). If, as here, a court denies a petition for a writ of habeas corpus, the court may only
23 issue a certificate of appealability when “the applicant has made a substantial showing of the
24 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make a substantial showing, the
25 petitioner must establish that “reasonable jurists could debate whether (or, for that matter, agree
26 that) the petition should have been resolved in a different manner or that the issues presented
27 were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473,
28 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). Here, petitioner has not made


1 such a showing. Therefore, the court declines to issue a certificate of appealability.

2 Accordingly,

- 3 1. The findings and recommendations issued on January 13, 2020 (Doc. No. 18) are
- 4 adopted in full;
- 5 2. This petition for writ of habeas corpus (Doc. No. 1) is denied;
- 6 3. The court declines to issue a certificate of appealability; and
- 7 4. The Clerk of the Court is directed to close this case.

8 IT IS SO ORDERED.

9 Dated: April 23, 2020


UNITED STATES DISTRICT JUDGE

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