1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 FREDERICK WILLIAMS, No. 1:20-cv-00082-NONE-SAB-HC 11 Petitioner, ORDER ADOPTING FINDINGS AND RECOMMENDATION, DISMISSING 12 PETITION FOR WRIT OF HABEAS v. CORPUS, DIRECTING CLERK OF COURT 13 TUOLUMNE COUNTY COURT, TO ASSIGN DISTRICT JUDGE AND CLOSE CASE, AND DECLINING TO ISSUE 14 Respondent. CERTIFICATE OF APPEALABILITY 15 (Doc. No. 9) 16 17 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus 18 pursuant to 28 U.S.C. § 2254. On January 30, 2020, the assigned magistrate judge issued 19 findings and recommendations recommending that the pending petition, reasoning that 20 petitioner's claim that his current state sentence violates California's sentencing laws fails to state 21 a cognizable federal habeas claim. (Doc. No. 9.) The findings and recommendations were served 22 on petitioner and contained notice that any objections were to be filed within thirty (30) days of 23 the date of service of the findings and recommendations. To date, petitioner has filed no 24 objections, and the time for doing so has passed.¹ 25 ¹ In lieu of filing objections, petitioner filed a motion to transfer the petition (Doc. No. 13), 26 which was denied on February 19, 2020. (Doc. No. 14.) Petitioner then filed a notice of appeal of that order. (Doc. No. 15.) On March 26, 2020, the Ninth Circuit dismissed the notice of 27 appeal for lack of jurisdiction. (Doc. No. 18.) The mandate issued April 17, 2020. (Doc. No. 28 19.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court holds the findings and recommendations to be supported by the record and proper analysis.

Having found that petitioner is not entitled to habeas relief, the court now turns to whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C. § 2253. The court should issue a certificate of appealability if "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

In the present case, the court finds that reasonable jurists would not find the court's determination that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to proceed further. Therefore, the court declines to issue a certificate of appealability.

Accordingly:

- The findings and recommendations issued on January 30, 2020 (Doc. No. 9) are adopted;
- 2. The petition for writ of habeas corpus is dismissed;
- The Clerk of Court is directed to assign a district judge to this case for the purpose of closing the case and then to close the case; and
- 4. The court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: April 21, 2020

UNITED STATES DISTRICT JUDGE