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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMY L. NEWMAN, III,
Petitioner,
v.
CDCR,
Respondent.

Case No. 1:20-cv-01118-NONE-HBK
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS RECOMMENDING
THAT THE PETITION FOR WRIT OF
HABEAS CORPUS BE DENIED
(Doc. Nos. 1, 4)

Petitioner Jimmy L. Newman, III, a state prisoner proceeding without counsel, has petitioned the court for a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner argues that the California Department of Corrections and Rehabilitation has failed to award him certain custody credits to which he is due under California law, wrongfully prolonging his incarceration. (*Id.* at 3.) Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302, the instant federal habeas petition was referred to a United States Magistrate Judge.

On August 21, 2020, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be dismissed due to petitioner’s failure to first exhaust his claims by presenting them to the state’s highest court. (Doc. No. 4.) Petitioner indicated that he has not sought state-level review of his claim, which is required by applicable law. (*Id.* at 2.)

Petitioner has not filed any objections to the pending findings and recommendations despite being given the opportunity to do so.

1 Pursuant to 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, the undersigned has reviewed
2 this case *de novo* and finds the pending findings and recommendations to be supported by the
3 record and proper analysis and will adopt the findings and recommendations.

4 The court must now turn to whether a certificate of appealability should be issued. A
5 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's
6 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*
7 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of
8 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the
9 petition should have been resolved in a different manner or that the issues presented were
10 ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484
11 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). In the present case, the
12 court finds that reasonable jurists would not find the court's determination that the petition should
13 be dismissed debatable or wrong, or that petitioner should be allowed to proceed further.
14 Therefore, the court declines to issue a certificate of appealability.

15 Accordingly, the court ORDERS as follows:

- 16 1. The findings and recommendations issued on August 21, 2020 (Doc. No. 4) are
17 ADOPTED in full;
- 18 2. The petition for writ of habeas corpus (Doc. No. 1) is DENIED;
- 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 purposes of
21 closure and to close this case.

22 IT IS SO ORDERED.

23 Dated: December 8, 2020

24 
UNITED STATES DISTRICT JUDGE