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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	MICHAEL A. YOCOM,	No. 1:20-cv-01141-DAD-SAB (HC)
12	Petitioner,	
13	v.	ORDER ADOPTING FINDINGS AND
14	ATTORNEY GENERAL,	<u>RECOMMENDATIONS DISMISSING</u> PETITION, AND DECLINING TO ISSUE
15	Respondent.	CERTIFICATE OF APPEALABILITY
16		(Doc. No. 8)
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18	Petitioner Michael A. Yocom is a state prisoner proceeding pro se and in forma pauperis	
19	with a petition for writ of habeas corpus pursu	uant to 28 U.S.C. § 2254. The matter was referred to
20	a United States Magistrate Judge pursuant to	28 U.S.C. § 636(b)(1)(B) and Local Rule 302.
21	On September 8, 2020, the assigned m	nagistrate judge issued findings and
22	recommendations recommending that the pen	ding petition for federal habeas relief be dismissed
23	because petitioner's direct appeal of his state	court judgment of conviction is still pending before
24	the state appellate court. (Doc. No. 8 at 2–3.)	Accordingly, the magistrate judge recommended
25	dismissing the petition without prejudice. (Id. at 3.) The pending findings and recommendations	
26	were served on petitioner with notice that any	v objections thereto were to be filed within thirty
27	(30) days of the service. (<i>Id.</i> at 3–4.) After se	eeking and receiving an extension of time to do so,
28	petitioner timely filed objections to the pendin	ng findings and recommendations on October 23,

1	2020. (Doc. No. 12.) Petitioner also filed a "Declaration of Most Unusual Circumstances to	
2	Entitle Him to Have Federal Interposition," on October 26, 2020. (Doc. No. 13.)	
3	In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a	
4	de novo review of the case. Having carefully reviewed the entire file, including petitioner's	
5	objections and declaration, the court concludes that the findings and recommendations are	
6	supported by the record and by proper analysis.	
7	In his objections, petitioner contends that his criminal appeal is no longer pending in the	
8	California Court of Appeal as of October 7, 2020. (Doc. No. 12 at 1.) However, petitioner's	
9	direct appeal remains pending because the Court of Appeal "remanded for the [trial] court to	
10	consider whether to exercise its discretion to dismiss the five-year term imposed for the section	
11	667, subdivision (a) prior serious felony enhancement," "strike the true findings and the terms	
12	imposed for the section 667.5, subdivision (b) prior prison term enhancements, and recalculate	
13	[petitioner]'s credits." People v. Yocom, No. F077786, 2020 WL 5939771, at *20 (Cal. Ct. App.	
14	Oct. 7, 2020). ¹ Moreover, petitioner appealed from the Court of Appeal's decision to the	
15	California Supreme Court on November 9, 2020. See Petition for Review, People v. Yocom, No.	
16	S265438 (Cal. Nov. 9, 2020),	
17	When, as in the present case, an appeal of a state criminal	
18	conviction is pending, a would-be habeas corpus petitioner must await the outcome of his appeal before his state remedies are	
19	exhausted, even where the issue to be challenged in the writ of habeas corpus has been finally settled in the state courts.	
20	Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). Here, petitioner's direct appeal of his	
21	state criminal conviction is still pending before the state appellate courts. Thus, petitioner's	
22	objections do not meaningfully dispute the magistrate judge's finding that the pending petition	
23	must be dismissed. The court will therefore dismiss the pending petition without prejudice to its	
24	refiling after petitioner's direct appeal from his judgment of conviction has come to a conclusion.	
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26	¹ The court "may take notice of proceedings in other courts, both within and without the federal	
27	judicial system, if those proceedings have a direct relation to matters at issue." U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (internal	
28	quotation marks and citation omitted).	

1	Having determined that petitioner is not entitled to habeas relief, the court now turns to	
2	whether a certificate of appealability should issue. "[A] state prisoner seeking a writ of habeas	
3	corpus has no absolute entitlement to appeal a district court's denial of his petition," and an	
4	appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-36	
5	(2003); see 28 U.S.C. § 2253(c)(1)(A) (permitting habeas appeals from state prisoners only with a	
6	certificate of appealability). Specifically, the federal rules governing habeas cases brought by	
7	state prisoners require a district court issuing an order denying a habeas petition to either grant or	
8	deny therein a certificate of appealability. See Rules Governing § 2254 Case, Rule 11(a). A	
9	judge shall grant a certificate of appealability "only if the applicant has made a substantial	
10	showing of the denial of a constitutional right" 28 U.S.C. § 2253(c)(2), and the certificate must	
11	indicate which issues satisfy this standard, 28 U.S.C. § 2253(c)(3). Here, petitioner has not made	
12	such a showing. Accordingly, a certificate of appealability will not be issued.	
13	Accordingly,	
14	1. The findings and recommendations issued September 8, 2020 (Doc. No. 8) are	
15	adopted in full;	
16	2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed without prejudice	
17	to its refiling, if appropriate, after petitioner's direct appeal of his judgment of	
18	conviction before the state courts has concluded;	
19	3. The court declines to issue a certificate of appealability; and	
20	4. The Clerk of the Court is directed to close this case.	
21	IT IS SO ORDERED.	
22	Dated: November 19, 2020 Jale A. Jugd	
23	UNITED STATES DISTRICT JUDGE	
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