

1 objections thereto were to be filed within thirty (30) days of service. (*Id.* at 6.) The findings and
2 recommendations were mailed to petitioner at his address of record on the date issued. However,
3 on May 6, 2021, the findings and recommendations were returned to the court by the U.S. Postal
4 Service as undeliverable with the same notation indicating that petitioner was not at that address.¹
5 To date, petitioner has not filed a notice of change of address with this court as required nor has
6 he communicated with the court in any way.

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
8 *de novo* review of the case. Having carefully reviewed the entire file, the court adopts the
9 findings and recommendations insofar as they recommend dismissal due to petitioner’s failure to
10 prosecute this action. The court therefore finds it unnecessary to address the other grounds for
11 dismissal discussed in the findings and recommendations.

12 Having determined that petitioner is not entitled to habeas relief, the court now turns to
13 whether a certificate of appealability should issue. The federal rules governing habeas cases
14 brought by state prisoners require a district court issuing an order denying a habeas petition to
15 either grant or deny therein a certificate of appealability. *See* Rules Governing § 2254 Case, Rule
16 11(a). A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather an
17 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
18 (2003); *see also* 28 U.S.C. § 2253(c)(1)(A) (permitting habeas appeals from state prisoners only
19 with a certificate of appealability). A judge shall grant a certificate of appealability “only if the
20 applicant has made a substantial showing of the denial of a constitutional right,” 28 U.S.C.
21 § 2253(c)(2), and the certificate must indicate which issues satisfy this standard, *id.* § 2253(c)(3).
22 In the present case, the court finds that reasonable jurists would not find the court’s rejection of
23 petitioner’s claims to be debatable or conclude that the petition should proceed further. Thus, the
24 court declines to issue a certificate of appealability.

25 ////

26 _____
27 ¹ According to his habeas petition filed on September 3, 2020, petitioner stated that he was then
28 incarcerated at Kings County Jail with an expected release date of January 22, 2021. (Doc. No. 1
at 2.)


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly:

1. The findings and recommendations issued on April 29, 2021, (Doc. No. 7), recommending that this petition be dismissed for failure to prosecute is adopted;
2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
3. The court declines to issue a certificate of appealability; and
4. The Clerk of the Court is directed to assign a district judge to this case for the purpose of closing the case and then to close this case.

IT IS SO ORDERED.

Dated: July 11, 2021



UNITED STATES DISTRICT JUDGE