



1 confinement, federal habeas relief is not available to him with respect to this claim.<sup>1</sup> (Doc. No.  
2 12 at 2–3.) Second, petitioner challenges the California Department of Corrections and  
3 Rehabilitation’s calculation of his custody credits (Doc. No. 1 at 1–2), and further indicates that  
4 he filed a petition for writ of habeas corpus in the state superior court (Doc. No. 9 at 1). Because  
5 petitioner has not yet presented his claim in this regard to the California Supreme Court, however,  
6 the magistrate judge found that his miscalculation of credits claim is not yet exhausted and should  
7 be dismissed at this time. (Doc. No. 12 at 3–4.)

8 The findings and recommendations were served petitioner and contained notice that any  
9 objections thereto were to be filed within thirty (30) days of the date of service of the findings and  
10 recommendations. To date, no objections have been filed, and the time for doing so has passed.

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

14 Having found that petitioner is not entitled to habeas relief, the court now turns to whether  
15 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no  
16 absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only  
17 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C.  
18 § 2253. The court should issue a certificate of appealability if “reasonable jurists could debate  
19 whether (or, for that matter, agree that) the petition should have been resolved in a different  
20 manner or that the issues presented were ‘adequate to deserve encouragement to proceed  
21 further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.  
22 880, 893 & n.4 (1983)).

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

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26 <sup>1</sup> The magistrate judge did not find it appropriate to construe the habeas petition as a § 1983  
27 complaint because petitioner does not name any respondent in this matter. (Doc. No. 12 at 3  
28 (“This conclusion, however, does not preclude Petitioner from pursuing his claims in a properly  
filed civil action brought pursuant to 42 U.S.C. § 1983.”).)

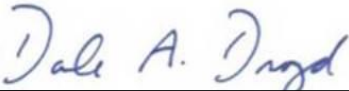
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Accordingly,

1. The findings and recommendations issued on April 30, 2021, (Doc. No. 12), are adopted in full;
2. The petition for writ of habeas corpus is dismissed without prejudice;
3. 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 the case; and
4. The court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: July 15, 2021

  
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UNITED STATES DISTRICT JUDGE