

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

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENYON DERRAL BROWN,  
Petitioner,

v.

NORTHERN KERN STATE PRISON,  
WARDEN,  
Respondent.

No. 1:21-cv-01061-ADA-HBK (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO CLOSE CASE, AND DECLINING TO  
ISSUE CERTIFICATE OF APPEALABILITY

(Doc. Nos. 1, 17, 35)

Petitioner Kenyon Derral Brown is a state prisoner proceeding *pro se* and *in forma pauperis* with an amended petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 29, 2022, the assigned magistrate judge issued findings and recommendations recommending the court grant respondent’s motion to dismiss and dismiss the pending petition for lack of federal habeas jurisdiction. (Doc. No. 35.) Those findings and recommendations were served on petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days of service. (*Id.*) On July 15, 2022, petitioner filed objections that largely restated the claims made in his petition; therefore, petitioner’s filed objections were unpersuasive.

1 (Doc. No. 36.)

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a  
3 *de novo* review of the case. After carefully reviewing the entire file, including petitioner’s  
4 objections, the court holds the findings and recommendations to be supported by the record and  
5 proper analysis.

6 Having found that petitioner is not entitled to habeas relief, the court now turns to whether  
7 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no  
8 absolute entitlement to appeal a district court’s denial of his petition, and an appeal is allowed in  
9 only certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C. §  
10 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching the  
11 underlying constitutional claims, the court should issue a certificate of appealability “if jurists of  
12 reason would find it debatable whether the petition states a valid claim of the denial of a  
13 constitutional right and that jurists of reason would find it debatable whether the district court was  
14 correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present  
15 case, the court finds that reasonable jurists would not find the court’s determination that the  
16 petition should be dismissed debatable or wrong, or that petitioner should be allowed to proceed  
17 further. Therefore, the court declines to issue a certificate of appealability.

18 Accordingly,

- 19 1. The findings and recommendations issued on June 29, 2022, (Doc. No. 35) are  
20 adopted in full;
- 21 2. Respondent’s motion to dismiss (Doc. No. 17) is granted;
- 22 3. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 23 4. The court declines to issue a certificate of appealability; and

24 ///

25 ///

26 ///

27 ///

28 ///

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

5. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: September 14, 2022

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE