Doc. 7 (HC) Hudkins v. Clark 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 TIMOTHY D. HUDKINS, No. 1:22-cv-00375-ADA-HBK (HC) 12 Petitioner. 13 v. ORDER ADOPTING FINDINGS AND 14 K. CLARK, WARDEN, PETITION FOR WRIT OF HABEAS CORPUS. DIRECTING CLERK OF COURT 15 Respondent. TO CLOSE CASE, AND DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY 16 (Doc. Nos. 1, 4) 17 18 19 Petitioner Timothy D. Hudkins is a state prisoner proceeding pro se and in forma pauperis 20 with an amended petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This 21 matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and 22 Local Rule 302. 23 On April 29, 2022, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be dismissed because it raises a civil rights claim and is 24 duplicative of a pending civil rights case. (Doc. No. 4.) Those findings and recommendations 25 26 were served on petitioner and contained notice that any objections thereto were to be filed within 27 fourteen (14) days of service. (*Id.*) On May 23, 2022, petitioner filed objections that largely

restated the claims made in his petition; therefore, petitioner's filed objections were unpersuasive.

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(Doc. No. 5.)

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

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

Accordingly,

- 1. The findings and recommendations issued on April 29, 2022, (Doc. No. 4) are adopted in full;
- 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 Court is directed to close the case.

27 Dated

IT IS SO ORDERED.

Dated: September 14, 2022

UNITED &TATES DISTRICT JUDGE