

1 unavailable under the circumstances presented notwithstanding Petitioner’s assertion that his trial
2 and appellate counsel misled or failed to inform him regarding the applicable habeas statute of
3 limitations, in part because Petitioner has not shown he acted diligently throughout the limitations
4 period.

5 In addition, the Court declines to issue a certificate of appealability. A state prisoner
6 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of
7 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
8 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of
9 appealability is 28 U.S.C. § 2253, which provides as follows:

10 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
11 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.

12 (b) There shall be no right of appeal from a final order in a proceeding to test
13 the validity of a warrant to remove to another district or place for commitment or
14 trial a person charged with a criminal offense against the United States, or to test
the validity of such person's detention pending removal proceedings.

15 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

16 (A) the final order in a habeas corpus proceeding in which the
17 detention complained of arises out of process issued by a State
court; or

18 (B) the final order in a proceeding under section 2255.

19 (2) A certificate of appealability may issue under paragraph (1) only if the
20 applicant has made a substantial showing of the denial of a constitutional
right.

21 (3) The certificate of appealability under paragraph (1) shall indicate which
22 specific issue or issues satisfy the showing required by paragraph (2).

23 If a court denies a petitioner’s petition, the court may only issue a certificate of
24 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
25 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
26 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
27 been resolved in a different manner or that the issues presented were ‘adequate to deserve
28 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting

1 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

2 The Court finds that Petitioner has not made the required substantial showing of the denial
3 of a constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists
4 would not find the Court's determination that Petitioner is not entitled to federal habeas corpus
5 relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the Court
6 declines to issue a certificate of appealability. Accordingly,

- 7 1. The Findings and Recommendations issued on December 1, 2022, (Doc. 19), are
8 **ADOPTED IN FULL.**
- 9 2. Respondent's motion to dismiss (Doc. 11), is **GRANTED.**
- 10 3. The petition for writ of habeas corpus is **DISMISSED WITH PREJUDICE.**
- 11 4. The Clerk of Court is directed to enter judgment and close the case.
- 12 5. The Court declines to issue a certificate of appealability.

13 This order terminates the action in its entirety.

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15 IT IS SO ORDERED.

16 Dated: February 6, 2023


UNITED STATES DISTRICT JUDGE

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