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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN WILLIAM UPSHAW,
Petitioner,
v.
WARDEN OF C.S.P. LOS ANGELES,
Respondent.

CASE NO. 1:22-cv-00949-AWI-HBK (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, AND DIRECTING CLERK OF
COURT TO ENTER JUDGMENT AND
CLOSE CASE
(Doc. Nos. 1, 4)

Petitioner John William Upshaw is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. No. 1. On October 25, 2022, the magistrate judge assigned to the case issued findings and recommendations to abstain from exercising jurisdiction and dismiss the petition without prejudice. Doc. No. 4. These findings and recommendations were served on all parties and contained notice that any objections were to be filed within fourteen days from the date of service of that order. As of the date of this order Petitioner has not filed objections, and the deadline for doing so has expired.

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. Having carefully reviewed the entire file, the Court concludes that the magistrate judge’s findings and recommendations are supported by the record and proper analysis.

In addition, the Court declines to issue a certificate of appealability. A state prisoner

1 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of
2 his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537
3 U.S. 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate of
4 appealability is 28 U.S.C. § 2253, which provides as follows:

5
6 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
7 district judge, the final order shall be subject to review, on appeal, by the court of
8 appeals for the circuit in which the proceeding is held.

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

13 (c)

14 (1) Unless a circuit justice or judge issues a certificate of appealability, an
15 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
18 court; or

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

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

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

25 If a court denies a petitioner’s petition, the court may only issue a certificate of
26 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
27 § 2253(c)(2). To make a substantial showing, the petitioner must establish that “reasonable
28 jurists could debate whether (or, for that matter, agree that) the petition should have been resolved
in a different manner or that the issues presented were ‘adequate to deserve encouragement to
proceed further.’” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463
U.S. 880, 893 & n.4 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial
showing of the denial of a constitutional right to justify the issuance of a certificate of

1 appealability. Reasonable jurists would not find the Court's determination that Petitioner is not
2 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
3 proceed further. Thus, the Court will decline to issue a certificate of appealability.

4 **ORDER**

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The findings and recommendations (Doc. No. 4) issued on October 25, 2022, are
7 ADOPTED in full;
- 8 2. The petition for writ of habeas corpus (Doc. No. 1) is DISMISSED without
9 prejudice;
- 10 3. The Clerk of Court shall ENTER judgment and CLOSE the file; and
- 11 4. The Court DECLINES to issue a certificate of appealability.

12 IT IS SO ORDERED.

13 Dated: December 2, 2022

14 
15 SENIOR DISTRICT JUDGE