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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ELLIX JIMMEYE, III,) Case No.: 1:23-cv-0252 JLT HBK (HC)
)
) Petitioner,) ORDER ADOPTING THE FINDINGS AND
) RECOMMENDATIONS, GRANTING
) v.) RESPONDENT’S MOTION TO DISMISS,
) DENYING PETITION FOR WRIT OF HABEAS
) BYRD, Warden,) CORPUS, DIRECTING CLERK OF COURT TO
) CLOSE CASE, AND DECLINING TO ISSUE
) CERTIFICATE OF APPEALABILITY
)
) (Docs. 1, 17, 19)

Ellix Jimmeyer III is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) Respondent moved to dismiss the petition, asserting it was untimely and unexhausted. (Doc. 17 at 2-4.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 1, 2023, the assigned magistrate judge found any petition by Petitioner should have been filed no later than September 10, 2004, and the petition in this action was filed “more than 18 years past the one-year limitations period.” (Doc. 19 at 3-4.) The magistrate judge found there were no grounds identified to toll this limitations period. (*Id.* at 4-5.) Therefore, the magistrate judge recommended that the Petition be dismissed as time barred. (*Id.* at 5, 7.) In addition, the magistrate judge noted, “Petitioner concedes that he has not sought administrative review at any level, and other than his direct appeal he did not file any petitions, applications, or motions with respect to his conviction in any court.” (*Id.* at 6.) Thus, the magistrate judge found

1 the claims were also unexhausted and recommended dismissal for Petitioner’s failure to exhaust
2 administrative remedies. (*Id.*) Finally, the magistrate judge recommended the Court not issue a
3 certificate of appealability. (*Id.* at 7.)

4 The Court served the Findings and Recommendations on all parties and notified them that
5 any objections were due with 14 days. (Doc. 19 at 7.) The Court also informed the parties that
6 the “failure to file objections within the specified time may result in the waiver of rights on
7 appeal.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Petitioner did
8 not file objections, and the deadline to do so expired.

9 According to 28 U.S.C. § 636 (b)(1)(C), the Court performed a *de novo* review of the
10 case. Having carefully reviewed the entire matter, the Court concludes that the Findings and
11 Recommendations are supported by the record and proper analysis. The Court agrees the Petition
12 should be dismissed—both as untimely and unexhausted—and a certificate appealability should
13 not issue.

14 The federal rules governing habeas cases brought by state prisoners require a district court
15 issuing an order denying a habeas petition to either grant or deny a certificate of appealability.
16 *See* Rules Governing § 2254 Case, Rule 11(a). A prisoner seeking a writ of habeas corpus has no
17 absolute entitlement to appeal, as an appeal is only allowed in certain circumstances. *Miller-El v.*
18 *Cockrell*, 537 U.S. 322, 335–36 (2003); *see also* 28 U.S.C. § 2253(c)(1)(A) (permitting habeas
19 appeals from state prisoners only with a certificate of appealability). A judge shall grant a
20 certificate of appealability “only if the applicant has made a substantial showing of the denial of a
21 constitutional right,” 28 U.S.C. § 2253(c)(2), and the certificate must indicate which issues satisfy
22 this standard, 28 U.S.C. § 2253(c)(3). In the present case, the Court finds that reasonable jurists
23 would not find the rejection of Petitioner’s claims to be debatable or conclude that the petition
24 should proceed further. Based upon the foregoing, the Court **ORDERS**:

- 25 1. The Findings and Recommendations issued on November 1, 2023 (Doc. 19) are
26 **ADOPTED** in full.
- 27 2. Respondent’s Motion to Dismiss (Doc. 17) is **GRANTED**.
- 28 3. The petition for writ of habeas corpus (Doc. 1) is **DISMISSED**.

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4. The Court declines to issue a certificate of appealability.

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

IT IS SO ORDERED.

Dated: **December 1, 2023**


UNITED STATES DISTRICT JUDGE