

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

JAMES EDWARD DAILEY,
Petitioner,

v.

STATE OF CALIFORNIA,
Respondent.

No. 1:23-cv-00389-ADA-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF. No. 4)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS AND DIRECTING
CLERK OF COURT TO ENTER JUDGMENT
AND CLOSE CASE

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Petitioner James Edward Dailey is a state parolee proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus 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 March 20, 2023, the assigned Magistrate Judge issued Findings and Recommendations to dismiss the petition. (ECF No. 4.) Those Findings and Recommendations were served upon all parties and contained notice that any objections thereto were to be filed within thirty (30) days after service. On April 18, 2023, Petitioner filed objections to the Findings and Recommendations. (ECF No. 7.) Petitioner seeks to cure the characterization deficiencies that the magistrate judge identified in the Findings and Recommendations. Petitioner disputes the

1 magistrate judge's finding and recommendation that his claims are not cognizable because he
2 seeks to name a proper defendant. (ECF No. 7 at 2.) First, Petitioner seeks to name a proper
3 respondent to the petition. (*Id.*) He also disputes the findings and recommendation that his claims
4 are not moot because names a respondent in his objections. (*Id.*) In addition, he argues that his
5 claim should be allowed to go forward because his in "constructive custody." (*Id.*)

6 Petitioner's arguments are unpersuasive. First, as noted in the Findings and
7 Recommendations, "a habeas corpus petition is the correct method for a prisoner to challenge 'the
8 legality or duration of his confinement.'" (ECF No. 54 at 2 (quoting *Badea v. Cox*, 931 F.2d
9 583,574 (9th Cir. 1991).) Here, because Petitioner's claims challenge the conditions of his
10 previous confinement, he must seek relief by way of a civil rights action under 42 U.S.C. § 1983.
11 Second, though Petitioner seeks to add a such an action cannot be taken through an objection to
12 the Findings and Recommendations. Rather, as a stated in the Findings and Recommendations,
13 Petitioner must amend the petition to name a proper respondent. However, while "[p]etitioner
14 would normally be given the opportunity to cure this defect by amending the petition to name a
15 proper respondent, ...in this case, the petition also suffers from other uncurable deficiencies."
16 (ECF No. 4 at 2.)

17 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a
18 *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's
19 objections, the Court concludes that the Magistrate Judge's Findings and Recommendations are
20 supported by the record and proper analysis.

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

26 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
27 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.

28 (b) There shall be no right of appeal from a final order in a proceeding to test

1 the validity of a warrant to remove to another district or place for commitment or
2 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.

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

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

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

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

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

14 If a court denies a petitioner's petition, the court may only issue a certificate of
15 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
16 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
17 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
18 been resolved in a different manner or that the issues presented were 'adequate to deserve
19 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
20 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

21 In the present case, the Court finds that Petitioner has not made the required substantial
22 showing of the denial of a constitutional right to justify the issuance of a certificate of
23 appealability. Reasonable jurists would not find the Court's determination that Petitioner is not
24 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
25 proceed further. Thus, the Court declines to issue a certificate of appealability.

26 Accordingly,


- 27 1. The Findings and Recommendations issued on March 20, 2023, (Doc. No. 4), are
28 adopted in full;
2. The petition for writ of habeas corpus is dismissed;
3. The Clerk of Court is directed to enter judgment and close the case; and

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

4. The Court declines to issue a certificate of appealability.
This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: May 30, 2023



UNITED STATES DISTRICT JUDGE