

1 recommendations to be supported by the record and proper analysis. As the magistrate judge
2 pointed out, there is no Article III case or controversy because the petitioner has not suffered an
3 actual injury. Doc. 13 at 2. The record in this case shows that petitioner has received the remedy
4 he sought. See Doc. 11-1 at 3, 6. Therefore, he does not have an actual injury. See *Spencer v.*
5 *Kemna*, 523 U.S. 1, 7 (1998) (explaining that the case or controversy requirement of Article III
6 requires that petitioner must have suffered “an actual injury traceable to the defendant and likely
7 to be redressed by a favorable judicial decision”).

8 Having found that petitioner is not entitled to habeas relief, the Court now turns to
9 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
10 has no absolute entitlement to appeal a district court’s denial of his petition, and an appeal is
11 allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-336 (2003). If a
12 court denies a habeas petition on the merits, the court may issue a certificate of appealability only “if
13 jurists of reason could disagree with the district court’s resolution of [the petitioner’s] constitutional
14 claims or that jurists could conclude the issues presented are adequate to deserve encouragement to
15 proceed further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While
16 the petitioner is not required to prove the merits of his case, he must demonstrate “something more
17 than the absence of frivolity or the existence of mere good faith on his . . . part.” *Miller-El*, 537 U.S.
18 at 338.

19 In the present case, the Court finds that reasonable jurists would not find the Court’s
20 determination that the petition should be denied debatable, wrong, or deserving of encouragement to
21 proceed further. Petitioner has not made the required substantial showing of the denial of a
22 constitutional right. Therefore, the Court declines to issue a certificate of appealability.

23 Accordingly:

- 24 1. The findings and recommendations issued on August 14, 2024, Doc. 13, are
25 ADOPTED in full;
- 26 2. Respondent’s motion to dismiss, Doc. 11, is GRANTED;
- 27 3. The petition for writ of habeas corpus is DISMISSED;
- 28 4. The Clerk of Court is directed to close the case; and

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

IT IS SO ORDERED.

Dated: October 23, 2024


UNITED STATES DISTRICT JUDGE