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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEROY TATE, JR.,

 Petitioner,

 v.

EDWARD BORLA, Warden,

 Respondent.

No. 1:24-cv-00324-KES-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
MOTION FOR STAY, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY,
AND DIRECTING CLERK OF COURT TO
ENTER JUDGMENT AND CLOSE CASE

(Docs. 7, 8)

Petitioner Leroy Tate, Jr., is a state prisoner 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, 2024, the assigned magistrate judge issued findings and recommendations to dismiss the petition as successive. Doc. 7. Those findings and recommendations were served on petitioner and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. No objections have been filed, and the deadline to do so has expired.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the case. Having carefully reviewed the entire file, the court concludes that the

1 magistrate judge’s findings and recommendations are supported by the record and proper
2 analysis. After the magistrate judge issued findings and recommendations, petitioner filed a
3 motion to stay the proceedings pending exhaustion of state remedies. Doc. 8. However,
4 regardless of whether petitioner pursues state remedies, his federal petition is successive and
5 petitioner failed to follow the procedures set out in 28 U.S.C. § 2244(b)(3)(A). *See* Doc. 7 at 2.
6 Therefore, the court lacks subject matter jurisdiction, *see Burton v. Stewart*, 549 U.S. 147, 152
7 (2007), and the motion for stay is denied.

8 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
9 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
10 absolute entitlement to appeal a district court’s denial of his petition, and an appeal is allowed
11 only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. §
12 2253. If a court denies a habeas petition on the merits, the court may issue a certificate of
13 appealability only “if jurists of reason could disagree with the district court’s resolution of [the
14 petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate
15 to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*,
16 529 U.S. 473, 484 (2000). While petitioner is not required to prove the merits of his case, he
17 must demonstrate “something more than the absence of frivolity or the existence of mere good
18 faith on his . . . part.” *Miller-El*, 537 U.S. at 338.

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

23 Accordingly,

- 24 1. The findings and recommendations issued on March 20, 2024, Doc. 7, are adopted
25 in full;
- 26 2. Petitioner’s motion for stay, Doc. 8, is denied;
- 27 3. The petition for writ of habeas corpus is dismissed;
- 28 4. The Clerk of Court is directed to enter judgment and close the case; and

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

IT IS SO ORDERED.

Dated: July 27, 2024



UNITED STATES DISTRICT JUDGE