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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM CUNNINGHAM,

Petitioner,

No. CIV S-06-2238 FCD DAD P

vs.

CLAUDE FINN, Warden,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On November 3, 2009, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Neither party has filed objections to the findings and recommendations.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis.


Rule 11 of the Federal Rules Governing Section 2254 Cases states that “the district court must issue or deny a certificate of appealability when it enters a final order adverse

1 to the applicant.” A certificate of appealability should be granted for any issue that petitioner
2 can demonstrate is “debatable among jurists of reason,” could be resolved differently by a
3 different
4 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
5 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).
6 For the reasons set forth in the magistrate judge’s November 3, 2009 findings and
7 recommendations, petitioner has not made a substantial showing of the denial of a constitutional
8 right. Accordingly, a certificate of appealability should not issue in this action.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The findings and recommendations filed November 3, 2009, are adopted in
11 full;
12 2. Respondent’s March 6, 2009 motion to dismiss (Doc. No. 15) is denied;
13 3. A certificate of appealability is not issued in this action; and
14 4. This action is dismissed pursuant to Rule 41(b) of the Federal Rules of Civil
15 Procedure.

16 DATED: January 4, 2010.

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19 FRANK C. DAMRELL, JR.
20 UNITED STATES DISTRICT JUDGE
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