IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

STEWART MANAGO,

Petitioner, No. CIV S-08-2857 GEB DAD P

vs.

JAMES WALKER, 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

to the applicant." A certificate of appealability should be granted for any issue that petitioner can demonstrate is "'debatable among jurists of reason,'" could be resolved differently by a different court, or is "'adequate to deserve encouragement to proceed further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). Here, petitioner has made a substantial showing of the denial of a constitutional right in the following issue(s) presented in the instant petition: whether petitioner's habeas petition is time-barred under the Antiterrorism and Effective Death Penalty Act of 1996.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed November 3, 2009, are adopted in full;

2. Respondent's March 2, 2009 motion to dismiss (Doc. No. 15) is granted;

3. A certificate of appealability is issued in the present action; and

4. This action is closed.

Dated: December 22, 2009

GARLAND E. BURRELL, JR.
United States District Judge