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

CARL D. MITCHELL,

No. 2:09-cv-00269-MCE-CMK-P

Petitioner,

vs.

ORDER

A. HEDGEPEETH,

Respondent.

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Petitioner, a state prisoner proceeding pro se, brings this petition 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 Eastern District of California local rules.

On November 19, 2010, the Magistrate Judge filed findings and recommendations herein which were served on the parties and which contained notice that the parties may file objections within a specified time. A timely objection to the findings and recommendations has been filed.

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule  
2 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire  
3 file, the court finds the findings and recommendations to be supported by the record and by  
4 proper analysis.

5 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the  
6 court has considered whether to issue a certificate of appealability. Before petitioner can appeal  
7 this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P.  
8 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under  
9 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a  
10 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of  
11 appealability indicating which issues satisfy the required showing or must state the reasons why  
12 such a certificate should not issue. See Fed. R. App. P. 22(b). Where the petition is dismissed  
13 on procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1)  
14 ‘that jurists of reason would find it debatable whether the district court was correct in its  
15 procedural ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition  
16 states a valid claim of the denial of a constitutional right.’” Morris v. Woodford, 229 F.3d 775,  
17 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)).  
18 For the reasons set forth in the Magistrate Judge’s findings and recommendations, the court finds  
19 that issuance of a certificate of appealability is not warranted in this case.

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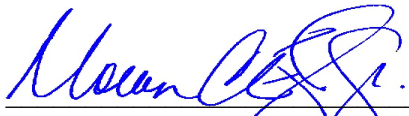
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Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed November 19, 2010, are adopted in full;
- 2. Petitioner's petition for a writ of habeas corpus (Doc. 1) is denied;
- 3. The court declines to issue a certificate of appealability; and
- 4. The Clerk of the Court is directed to enter judgment and close this file.

IT IS SO ORDERED.

Dated: February 4, 2011

  
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MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE