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

BRIAN FOWLIE,

Petitioner,

No. CIV S-09-2857 LKK GGH P

vs.

JOHN W. HAVILAND, et al.,

Respondents.

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 Rule 302.

On July 9, 2010, the magistrate judge filed findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within twenty-one days. Petitioner has filed objections to the findings and recommendations.


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

1 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
2 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
3 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
4 satisfy the required showing or must state the reasons why such a certificate should not issue.
5 Fed. R. App. P. 22(b). Petitioner has made a substantial showing of the denial of a constitutional
6 right in the following issue presented in the instant petition: whether the Board of Parole
7 Hearings finding a petitioner suitable for parole subsequent to denying him parole renders the
8 challenge to the prior parole denial moot.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The findings and recommendations filed July 9, 2010, are adopted in full;
- 11 2. Petitioner's application for a writ of habeas corpus is denied;
- 12 3. Petitioner may file a new application for a writ of habeas corpus concerning the
13 Governor's 2009 BPH decision. This court makes no decision as to the merits of such an
14 application.
- 15 4. A certificate of appealability is issued in the present action.

16 DATED: September 16, 2010.

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19 LAWRENCE K. KARLTON
20 SENIOR JUDGE
21 UNITED STATES DISTRICT COURT
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