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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMIAN TOYEBO,

 Petitioner,

 v.

S. HUBARD,

 Respondent.

No. 2:12-cv-2268-JAM-CMK-P

ORDER

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On August 15, 2014, 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. No objections to the findings and recommendations have been filed.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and y the Magistrate Judge’s analysis.

Pursuant to Rule 11(a) of the Federal rules Governing Section 2254 Cases, the court has considered whether to issue a certificate of appealability. Before petitioner can appeal this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P.

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

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations filed August 15, 2014, are adopted in full;
- 15 2. Respondent’s unopposed motion to dismiss (Doc. 16) is granted;
- 16 3. No certificate of appealability shall issue; and
- 17 4. The Clerk of the Court is directed to enter judgment and close this case.

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19 DATED: October 22, 2014

20 /s/ John A. Mendez

21 UNITED STATES DISTRICT COURT JUDGE
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