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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KASEEM J. WINN,  
Petitioner,  
v.  
FRED FOULK,  
Respondent.

No. 2:13-cv-2111 KJM AC P

ORDER

Petitioner, a state prisoner proceeding with counsel, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 18, 2015, the magistrate judge filed findings and recommendations, 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 fourteen 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 reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. The court writes separately to emphasize that although the magistrate judge specifically noted the absence of evidence to support petitioner’s assertions of mental illness, *see* ECF No. 19 at 7,

1 petitioner still has not presented evidence to support those assertions. Similarly, petitioner's  
2 objections do not specifically address his mental status during the period between the time his  
3 conviction became final and the filing of this action despite the magistrate judge's findings  
4 concerning the relevance of this time period and the absence of such information from the record.  
5 *Cf.* ECF No. 19 at 7.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations filed February 18, 2015 (ECF No. 19), are adopted  
8 in full;
- 9 2. Petitioner's request for a stay (ECF No. 16) is denied;
- 10 3. Respondent's motion to dismiss (ECF No. 10) is granted; and
- 11 4. Petitioner is directed to file an amended petition, including exhausted claims only,  
12 within 28 days of service of this order. Should petitioner fail to file an amended and fully  
13 exhausted petition, the claims identified in the findings and recommendations as unexhausted  
14 (ECF No. 19) will be stricken and those portions of the petition disregarded for all purposes. The  
15 case will then proceed on the basis of the petition as amended by operation of this order.

16 DATED: March 20, 2015

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20 UNITED STATES DISTRICT JUDGE  
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