

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID EARL GRAY,  
Petitioner,  
v.  
WARDEN RICK HILL,  
Respondent.

No. 2:14-cv-1047-JAM-EFB P

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 10, 2015, the district judge adopted the undersigned’s findings and recommendations, granted respondent’s motion to dismiss, and directed petitioner to file an amended petition to delete his uncognizable (Claims 5(K), 5(L), and 5(P)), unexhausted (Claims 5(J), 5(M), 5(N), 5(O), 5(Q), and 6), and untimely (Claim 8) claims within thirty days of the date of that order.

The time period for acting has passed and petitioner has not filed an amended petition or otherwise responded to that order.<sup>1</sup>

Accordingly, it is hereby RECOMMENDED that this action be dismissed. *See* Fed. R. Civ. P. 41(b); Rule 12, Rules Governing § 2254 Cases; Local Rule 110.

---

<sup>1</sup> Petitioner did file an interlocutory appeal from the district judge’s order. As that order was not certified for interlocutory appeal pursuant to 28 U.S.C. § 1292, on July 30, 2015, the U.S. Court of Appeals for the Ninth Circuit dismissed the appeal.

1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
3 after being served with these findings and recommendations, any party may file written  
4 objections with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
6 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
7 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In  
8 his objections petitioner may address whether a certificate of appealability should issue in the  
9 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing  
10 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it  
11 enters a final order adverse to the applicant).

12 DATED: August 3, 2015.

13 A handwritten signature in blue ink, reading "Edmund F. Brennan", is written over a horizontal line.

14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28