

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

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

KIM L. OWENS,

No. 2:14-cv-2610-CMK-P

Petitioner,

vs.

ORDER

CALIFORNIA BOARD OF PRISON
TERMS,

Respondent.

_____/

Petitioner, a state prisoner proceeding with counsel, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action.

On April 30, 2015, the court issued petitioner an order to show cause, within 30 days, why this case should not be summarily dismissed for failure to raise a federally cognizable claim. To date, no response to the order to show cause have been received. Petitioner was warned that failure to respond to the order to show cause may result in the dismissal of this action for the reasons outlined as well as for failure to prosecute and comply with court rules and orders. See Local Rule 110.

For the reasons outlined in the court’s April 30, 2015, order, the court finds it appropriate to summarily dismiss this action for failure to raise a federally cognizable claim

1 establishing petitioner is entitled to relief in this court, and for petitioner's failure prosecute and
2 comply with court rules and orders.

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

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. This action is summarily dismissed;
- 20 2. The court declines to issue a certificate of appealability; and
- 21 3. The Clerk of the Court is directed to close this case.

22
23 DATED: June 10, 2015

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE