

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

ROBIN LYNN BAILEY,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:15-cv-0302 KJM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, 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 28, 2017, 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 carefully reviewed the file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

////

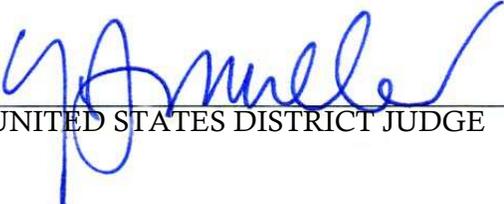
////

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

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed February 28, 2017, are adopted in full;
2. Respondent's motion to dismiss (ECF No. 10) is granted;
3. The dismissal is without prejudice to Bailey's right to pursue his claims under § 1983;
4. Within thirty days of this order, plaintiff may file a civil rights complaint in the instant proceeding or voluntarily dismiss his habeas petition and file a new § 1983 action; and
5. The court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

DATED: August 9, 2017.


UNITED STATES DISTRICT JUDGE