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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERMAINE BARKLEY,

 Petitioner,

 v.

JOE LIZARRAGA, WARDEN,

 Respondent.

No. 2:15-cv-0655 JAM AC P

ORDER

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this court are the magistrate judge’s dispositive findings and recommendations, petitioner’s motion to stay the proceedings, motion for alternative orders, and motion for a thirty-day extension of time to comply with the court’s orders. See ECF Nos. 41, 44, 47, 48. In addition, respondent has filed an opposition to petitioner’s motion to stay. See ECF No. 49.

For the reasons stated below, the court will adopt the magistrate judge’s findings and recommendations and decline to issue the certificate of appealability. In addition, petitioner’s motion to stay, his motion for alternative orders, and his motion for a thirty-day extension of time to comply with the magistrate judge’s March 1, 2021, order to file objections to the findings and recommendations will be denied.

1 I. RELEVANT PROCEDURAL HISTORY

2 On March 1, 2021, the magistrate judge issued findings and recommendations in this
3 action. ECF No. 41. The order recommended that the petition be denied, and the parties were
4 given twenty-one days within which to file objections to the magistrate’s findings and
5 recommendations. See id. at 27.

6 Thereafter, on March 15, 2021, petitioner requested a thirty-day extension of time to file
7 objections to the court’s order. ECF No. 42. On March 18, 2021, petitioner’s motion was
8 granted, and the court gave petitioner until April 26, 2021, to file his objections. See ECF No. 43.
9 This was more time than petitioner had asked for.

10 On March 24, 2021, instead of filing formal objections to the court’s findings as he had
11 been ordered to do, petitioner filed a motion to stay the proceedings on the grounds that he had
12 found newly discovered evidence. See ECF No. 44. The “new evidence” was that a few years
13 earlier, petitioner’s trial counsel had stood trial for the attempted murder of some of his family
14 members. See id. at 1-2. 4-5.

15 Less than a month later, on April 19, 2021, once again, instead of petitioner filing formal
16 objections to the court’s March 1, 2021, findings and recommendations, he filed a “motion for
17 alternative orders,” which asked the court a second time to stay this action and hold it in
18 abeyance, presumably to enable him to return to state court and exhaust claims he wants to raise
19 based upon the newly discovered evidence. See ECF No. 47 at 1-2.

20 Four days later, on April 23, 2021, petitioner’s instant motion for a thirty-day extension of
21 time to comply with the court’s March 1, 2021, order was docketed. See ECF No. 48. On April
22 26, 2021, respondent filed an opposition to petitioner’s March 24, 2021, motion to stay the
23 proceedings. ECF Nos. 49.

24 II. DISCUSSION

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
26 court has conducted a de novo review of this case. Having done so, the court first finds that the
27 record clearly indicates that plaintiff has had more than ample time to file formal objections to the
28 magistrate judge’s dispositive findings and recommendations issued in March 2021. Instead of

1 doing so, however, petitioner filed what are ultimately two different motions to stay these
2 proceedings while he returns to state court to exhaust new ineffective assistance of counsel
3 claims. See generally ECF Nos. 44, 47.

4 Petitioner's actions indicate to the court that between March 1, 2021, and April 23, 2021,
5 the day petitioner's instant motion for a thirty-day extension of time was docketed in this court,
6 he had both the ability and opportunity to file formal objections to the magistrate judge's findings
7 and recommendations, yet he actively chose not to do so.

8 For this reason, and because petitioner's stay motions technically provide reasons why the
9 magistrate's findings and recommendations should not be adopted – to wit, because petitioner has
10 new claims based upon purportedly “newly discovered evidence” that must be exhausted in state
11 court prior to the court issuing a dispositive order in this case – the court construes petitioner's
12 March 24, 2021, motion to stay (ECF No. 44) and his April 19, 2021, motion for alternative
13 orders (ECF No. 47) as objections to the court's March 1, 2021, findings and recommendations
14 (ECF No. 41). As a result, petitioner's motion for a thirty-day extension of time to file objections
15 to the magistrate judge's order (ECF No. 48) is not needed. Accordingly, it will be denied as
16 moot.

17 Next, regarding the substantive argument in petitioner's two stay motions (see ECF Nos.
18 44, 47), namely, that his trial counsel's prosecution for attempted murder in recent years warrants
19 petitioner being able to raise new ineffective assistance of counsel claims at the state level and
20 then at the federal level, the argument is without merit. This is because even if petitioner's trial
21 counsel suffered from mental health problems during petitioner's trial,¹ the claims in the instant
22 petition still fail to demonstrate that trial counsel's performance was so deficient during
23 petitioner's trial that it rose to the level of ineffective assistance at any given point during those
24 proceedings. See generally ECF Nos. 19, 41 (petitioner's second amended petition and
25 magistrate judge's dispositive findings and recommendations).

26
27 ¹ In petitioner's first motion to stay, he alleges that at his trial counsel's own criminal
28 proceedings, he claimed that he had had a lifelong struggle with mental illness. See ECF No. 44
at 1.

1 For these reasons, having carefully reviewed the entire file, the court finds the magistrate
2 judge's findings and recommendations to be supported by the record and by proper analysis. It
3 also finds the newly presented facts raised in petitioner's objections / stay motions to be
4 immaterial to the magistrate judge's analysis of the claims in the petition. Therefore, they will be
5 denied. As a result, the court neither reaches nor considers respondent's opposition to petitioner's
6 motions to stay. See ECF No. 49.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner's motion to stay, filed March 24, 2021 (ECF No. 44), is DENIED.
- 9 2. Petitioner's motion for alternative orders, filed April 19, 2021 (ECF No. 47), is
10 DENIED.
- 11 3. Petitioner's motion for a thirty-day extension of time to comply with the court's order,
12 filed April 23, 2021 (ECF No. 48), is DENIED as moot.
- 13 4. The findings and recommendations issued March 1, 2021 (ECF No. 41), are
14 ADOPTED in full.
- 15 5. The second amended petition for writ of habeas corpus (ECF No. 19) is DENIED, and
16 6. The court DECLINES to issue the certificate of appealability referenced in 28 U.S.C. §
17 2253.

18
19 DATED: April 29, 2021

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE