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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY DOWNS,  
Petitioner,  
v.  
JEFFREY BEARD,  
Respondent.

No. 2:15-cv-0724 KJM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner’s application was filed on April 1, 2015. (ECF No. 1). 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 January 16, 2018, the magistrate judge issued findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days.

On January 26, 2018, petitioner filed a motion for extension of time to file objections to the findings and recommendations. (ECF No. 32). The magistrate judge granted the motion, giving petitioner until February 28, 2018 to file his objections. (ECF No. 33). At that time, the

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1 court warned petitioner that no further extensions of time would be granted absent exigent  
2 circumstances. (*Id.* at 2). The magistrate judge’s decision to deny petitioner any additional  
3 extensions of time appears to stem from the fact that petitioner has a well-documented history of  
4 requesting extensions of time in this matter. (*See* ECF No. 31 at 2 (documenting court’s grant of  
5 six extensions of time to petitioner to file an amended habeas petition and court’s denial therein  
6 of two subsequent extension requests to file same)).

7 On February 26, 2018, petitioner filed a second motion for extension of time to file  
8 objections to the findings and recommendations. (ECF No. 36). Petitioner’s extension request  
9 was denied given his failure to show the existence of exigent circumstances that would warrant a  
10 grant of the motion. (*See* ECF No. 37 at 3).

11 The court presumes that any findings of fact are correct. *See Orand v. United States*, 602  
12 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo.  
13 *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed  
14 the file, the court finds the findings and recommendations to be supported by the record and by  
15 the proper analysis.

16 Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts  
17 requires this court to “issue or a deny a certificate of appealability when it enters a final order  
18 adverse to the applicant.” Rule 11, 28 U.S.C. foll. § 2254. A certificate of appealability may  
19 issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial  
20 of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of  
21 appealability indicating which issues satisfy the required showing or must state the reasons why  
22 such a certificate should not issue. Fed. R. App. P. 22(b). For the reasons set forth in these  
23 findings and recommendations it does not appear the claims petitioner has sought to raise in this  
24 action are cognizable under the federal habeas corpus statute or that petitioner has made a  
25 substantial showing of the denial of a constitutional right. Accordingly, this court will not issue a  
26 certificate of appealability.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations issued January 16, 2018 (ECF No. 31) are ADOPTED in full;
2. Petitioner's motions for relief and sanctions (ECF Nos. 25, 26) are DENIED,
3. Petitioner's petition for writ of habeas corpus (ECF No. 1) is DISMISSED for failure to prosecute; and
4. The court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

DATED: March 27, 2018.

  
UNITED STATES DISTRICT JUDGE