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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENZEL DEMAR CRISP,
Petitioner,
v.
DAVE DAVEY,
Respondent.

No. 2:15-cv-0938 GEB KJN P

ORDER

Petitioner, a state prisoner proceeding through counsel, has filed this 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.

On August 10, 2017, the magistrate judge filed findings and recommendations herein 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 entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

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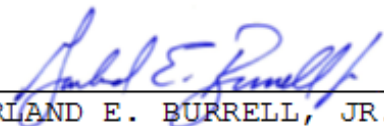
1 In his objections, petitioner requests that the court issue a certificate of appealability.
2 Although the findings and recommendations directed petitioner to address whether a certificate of
3 appealability should issue, a certificate of appealability is not appropriate at this time because no
4 final order or judgment has been entered.

5 In a habeas action, “the final order shall be subject to review” on appeal. 28 U.S.C. §
6 2253(a). “Unless a circuit justice or judge issues a certificate of appealability, an appeal may not
7 be taken to the court of appeals from ... the final order in a habeas corpus proceeding in which the
8 detention complained of arises out of process issued by a State court.” 28 U.S.C. §
9 2253(c)(1)(A). Section 2253 does not mention interlocutory appeals, nor does it authorize the
10 issuance of a certificate of appealability for an interlocutory appeal. Accordingly, petitioner’s
11 request for a certificate of appealability is denied.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations filed August 10, 2017, are adopted in full;
- 14 2. Respondent’s motion to dismiss (ECF No. 25) is denied;
- 15 3. Respondent shall file an answer to the petition within 30 days from the date of this
16 order; and
- 17 4. Petitioner’s request for issuance of a certificate of appealability is denied.

18 Dated: September 19, 2017

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23 GARIAND E. BURRELL, JR.
24 Senior United States District Judge
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