

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

LUIS M. MOLINA,

 Petitioner,

 v.

PONCE,

 Respondent.

No. 2:15-cv-01275 GGH

ORDER & FINDINGS AND
RECOMMENDATIONS

Petitioner, a federal prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2251. Petitioner argues that respondent violated his constitutional rights to due process and equal protection when respondent denied his request for a year off his sentence once he completed the Bureau of Prison’s (BOP) Residential Drug Abuse Program (RDAP). ECF No. 1 at 3, 6. On September 10, 2015, the court dismissed the petition with thirty (30) days to file an amended petition, finding that petitioner was not entitled to relief because he did not state a claim for violation of his federal or Constitutional rights. ECF No. 7. Specifically, the court found that there is no Constitutional right to a lesser sentence because of one’s participation in RDAP. In addition, the court found that to the extent petitioner was attempting to assert a violation of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–06, that claim was meritless. The court warned petitioner that a failure to file a timely amended petition, or comply with any other part of the order, would result in the dismissal of his case. Id.

1 at 6. Petitioner has yet to file an amended petition.

2 Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must
3 issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A
4 certificate of appealability may issue only “if the applicant has made a substantial showing of the
5 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth in these
6 findings and recommendations, a substantial showing of the denial of a constitutional right has
7 not been made in this case.

8 In accordance with the foregoing, THE COURT HEREBY ORDERS that the Clerk of the
9 Court assign a district judge to this case.

10 THE COURT ALSO HEREBY RECOMMENDS that:

- 11 1. The petition, ECF No. 1, be DISMISSED without prejudice for failure to prosecute
12 under Federal Rule of Civil Procedure 41(b); and
- 13 2. The District Court decline to issue a certificate of appealability.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
19 shall be served and filed within fourteen days after service of the objections. Failure to file
20 objections within the specified time may waive the right to appeal the District Court’s order.
21 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: November 4, 2015

23 /s/ Gregory G. Hollows

24 UNITED STATES MAGISTRATE JUDGE

25
26
27
28 /moli1275.dism.woprej