

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

JOHN HENSON,
Petitioner,
v.
DARREN GRIEM,
Respondent.

No. 2:16-cv-1908-JAM-EFB P

ORDER

Petitioner is a former inmate proceeding without counsel with a petition 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 April 21, 2017, the magistrate judge filed findings and recommendations herein 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. Petitioner failed to file timely objections and on June 29, 2017, this court adopted the findings and recommendations, dismissed the action because of petitioner’s failure to exhaust state court remedies, and declined to issue a certificate of appealability. Judgment was duly entered. ECF No. 13.

On August 3, 2017, petitioner requested a certificate of appealability and filed belated objections, claiming that he was not properly served with the magistrate judge’s findings and recommendations. ECF No. 16, 18. The docket reflects that the findings and recommendations

1 were properly served on the petitioner at his address of record. See ECF Nos. 9 & 10. However,
2 in an abundance of caution, the court will reconsider the June 29, 2017 order in light of the late
3 objections. See Fed. R. Civ. P. 59(e) and 60(b). So considered, the objections are overruled.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
5 court has conducted a de novo review of this case, including petitioner's objections to the
6 findings and recommendations of the magistrate judge and his request for a certificate of
7 appealability. Having carefully reviewed the entire file, the court finds the findings and
8 recommendations to be supported by the record and by proper analysis. Accordingly, the court
9 will confirm the June 29, 2017 order adopting in full the findings and recommendations,
10 dismissing this action without prejudice, and declining to issue a certificate of appealability.

11 Petitioner requested an extension of time to file a notice of appeal. ECF No. 17. The
12 Court granted the extension on November 30, 2017, and, pursuant to the Ninth Circuit's remand
13 order, instructed that Petitioner need not file an additional notice of appeal. ECF No. 23.

14 Petitioner also requested leave to proceed in forma pauperis on appeal. ECF Nos. 15.
15 This request fails to satisfy all three of the requirements set forth in Rule 24(a) of the Federal
16 Rules of Appellate Procedure, and is therefore denied.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The order entered on June 29, 2017 adopting in full the findings and
19 recommendations, dismissing this action without prejudice, and declining to issue a
20 certificate of appealability (ECF No. 12), is CONFIRMED.
- 21 2. Petitioner's request for leave to proceed in forma pauperis on appeal (ECF No. 15) is
22 denied without prejudice. The Clerk of the Court is directed to serve a copy of this
23 order on the United States Court of Appeals for the Ninth Circuit, and petitioner is
24 hereby informed that he may file a motion to proceed in forma pauperis in the United
25 States Court of Appeals for the Ninth Circuit. See Fed. R. App. P. 24(a)(5).

26 DATED: December 1, 2017

27
28

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE