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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC LINELL SHELMIRE,
Petitioner,
v.
JOE LIZZARAGA,
Respondents.

No. 2:16-cv-2667 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. 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 March 9, 2017, the magistrate judge filed 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 April 4, 2017, the court granted petitioner’s request for a 30-day extension of time to file objections. Petitioner has not filed objections to the findings and recommendations or anything further.

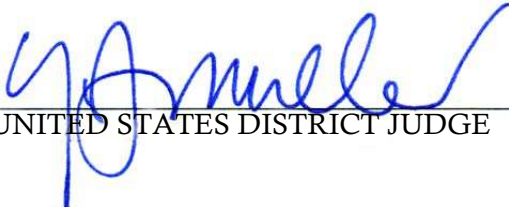
The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the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

1 Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts
2 requires the district court to “issue or a deny a certificate of appealability when it enters a final
3 order adverse to the applicant.” Rule 11, 28 U.S.C. foll. § 2254. The court must either issue a
4 certificate of appealability indicating which issues satisfy the required showing or must state the
5 reasons why such a certificate should not issue. Fed. R. App. P. 22(b). Where, as here, the
6 petition was dismissed on procedural grounds, a certificate of appealability “should issue if the
7 prisoner can show: (1) ‘that jurists of reason would find it debatable whether the district court
8 was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it debatable
9 whether the petition states a valid claim of the denial of a constitutional right.’” *Morris v.*
10 *Woodford*, 229 F.3d 775, 780 (9th Cir. 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484
11 (2000)). For the reasons set forth in the magistrate judge’s findings and recommendations, no
12 jurist of reason would find it debatable whether petitioner is required to obtain an order from the
13 United States Court of Appeals for the Ninth Circuit before he can proceed with the instant
14 application. Accordingly, this court declines to issue a certificate of appealability.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The findings and recommendations filed March 9, 2017 (ECF No. 6) are adopted in
17 full;
- 18 2. This action is dismissed without prejudice; and
- 19 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.
20 § 2253.

21 DATED: May 18, 2017.

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UNITED STATES DISTRICT JUDGE