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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH JOHNSON,
Petitioner,
v.
CRAIG KOENIG,
Respondent.

No. 2:16-cv-2744 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. On October 27, 2017, the court recommended that a motion to dismiss brought by respondent be granted, and that this action be dismissed as time-barred. On April 13, 2018, the district court judge assigned to this case remanded for resolution of what the district court identifies as a material dispute of fact. Specifically, whether petitioner received a document issued by the California Court of Appeal on December 11, 2014 titled “Remittitur” around the time it was issued or later in 2016.

In documents filed by petitioner after the district court’s order (ECF Nos. 29 & 32), petitioner appears to indicate that he does not dispute that he received the “Remittitur” around the time it was issued. That being the case, on July 12, 2018, the court ordered petitioner to “file a document in which petitioner indicates in clear terms whether he disputes that on or around

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1 December 16, 2014, he received, from the California Court of Appeal, a document titled
2 ‘Remittitur.’”

3 In response to the court’s order, petitioner indicates “[t]he petitioner does not dispute he
4 received the ‘remittitur’ as indicated” and “the petitioner never did aver he did not receive a
5 ‘remittitur’ on December 16, 2014. . .”

6 Since it is not disputed that petitioner received a “Remittitur” from the California Court of
7 Appeal on December 16, 2014, and for the all the reasons stated in the court’s October 27, 2017
8 findings and recommendations, the court will again recommend that respondent’s motion to
9 dismiss be granted, and this action be dismissed as time-barred.

10 Accordingly, IT IS HEREBY RECOMMENDED that:

- 11 1. Respondent’s motion to dismiss (ECF No. 18) be granted;
- 12 2. Petitioner’s petition for a writ of habeas corpus be dismissed as time-barred; and
- 13 3. This case be closed.

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.” In his objections petitioner
19 may address whether a certificate of appealability should issue in the event he files an appeal of
20 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
21 court must issue or deny a certificate of appealability when it enters a final order adverse to the
22 applicant). Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of
23 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it
24 debatable whether the district court was correct in its procedural ruling;’ and (2) ‘that jurists of
25 reason would find it debatable whether the petition states a valid claim of the denial of a
26 constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
27 McDaniel, 529 U.S. 473, 484 (2000)). Any response to the objections shall be served and filed
28 within fourteen days after service of the objections. The parties are advised that failure to file

1 objections within the specified time may waive the right to appeal the District Court's order.

2 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: July 30, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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