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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH WAYNE MILLS,  
Petitioner,  
v.  
CALIFORNIA MEDICAL FACILITY, et  
al.,  
Respondents.

No. 2: 16-cv-2766 JAM KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 29, 2017, the court dismissed this action based on petitioner’s failure to exhaust state court remedies. (ECF No. 18.) On September 24, 2019, the court denied petitioner’s August 8, 2019 motion to reopen this action. (ECF No. 20.)

On October 30, 2019, the Ninth Circuit Court of Appeals remanded this action to this court for the limited purpose of granting or denying a certificate of appealability regarding the September 24, 2019 order denying petitioner’s motion to reopen this action. (ECF No. 27.)

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). For the reasons stated in the May 3, 2017 findings and recommendations recommending that this action be dismissed based on petitioner’s failure to exhaust state court remedies, a certificate of appealability should not issue in this action.

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Accordingly, IT IS HEREBY ORDERED that:

1. The court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.
2. The Clerk of the Court is directed to serve this order on the Ninth Circuit Court of Appeals.

DATED: November 14, 2019

/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE