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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOMMY GENE DANIELS,  
Petitioner,

v.

SHAWN HATTON,  
Respondent.

No. 2:16-cv-3025 MCE AC P

ORDER

Petitioner, a state prisoner proceeding through counsel, has filed this application 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 July 22, 2022, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections thereto were to be filed within twenty-one (21) days. ECF No. 28. Petitioner has filed objections to the findings and recommendations and requested a certificate of appealability. ECF No. 29.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

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1 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has  
2 considered whether to issue a certificate of appealability. Before Petitioner can appeal this  
3 decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P.  
4 22(b). Where the petition is denied on the merits, a certificate of appealability may issue  
5 under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a  
6 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of  
7 appealability indicating which issues satisfy the required showing or must state the reasons why  
8 such a certificate should not issue. See Fed. R. App. P. 22(b). Where the petition is dismissed on  
9 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that  
10 jurists of reason would find it debatable whether the district court was correct in its procedural  
11 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid  
12 claim of the denial of a constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir.  
13 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604 (2000)). For the reasons  
14 set forth in the Magistrate Judge's findings and recommendations, and because the Court agrees  
15 that there was no denial of Petitioner’s constitutional rights for those same reasons, the Court  
16 finds that issuance of a certificate of appealability is not warranted in this case.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations filed July 22, 2022 (ECF No. 28), are ADOPTED  
19 in full;
- 20 2. The petition for writ of habeas corpus (ECF No. 1) is DENIED;
- 21 3. The Court declines to issue the certificate of appealability referenced in 28 U.S.C.  
22 § 2253; and
- 23 4. The Clerk of Court is directed to close the case.

24 IT IS SO ORDERED.

25 Dated: September 22, 2022

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28 MORRISON C. ENGLAND, JR.  
SENIOR UNITED STATES DISTRICT JUDGE