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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DERRICK R. CALDWELL,
Petitioner,
v.
MICHAEL SEXTON,
Respondent.

No. 2:18-cv-0712 WBS CKD P

FINDINGS AND RECOMMENDATIONS

By order filed December 5, 2018, petitioner’s petition for a writ of habeas corpus was dismissed and thirty-days leave to file an amended petition was granted. Petitioner was warned that failure to file an amended petition would result in a recommendation that this action be dismissed. The thirty-day period has now expired, and petitioner has not filed an amended petition.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” In his objections petitioner

1 may address whether a certificate of appealability should issue in the event he files an appeal of
2 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
3 court must issue or deny a certificate of appealability when it enters a final order adverse to the
4 applicant). Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of
5 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it
6 debatable whether the district court was correct in its procedural ruling;’ and (2) ‘that jurists of
7 reason would find it debatable whether the petition states a valid claim of the denial of a
8 constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.
9 McDaniel, 529 U.S. 473, 484 (2000)). Any response to the objections shall be served and filed
10 within fourteen days after service of the objections. The parties are advised that failure to file
11 objections within the specified time may waive the right to appeal the District Court’s order.
12 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: January 16, 2019



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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