

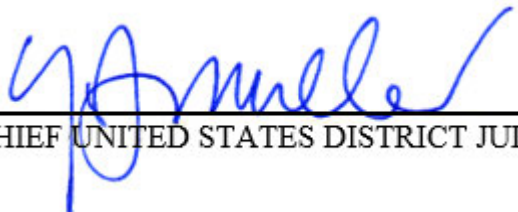


1 single element discussed in the findings and recommendations. Petitioner was convicted of  
2 making a criminal threat against prison staff. ECF No. 25 at 1. The state criminal charge requires  
3 proof of five elements. ECF No. 38 at 12-13 (quoting ECF No. 32-14 at 6-10). The magistrate  
4 judge found petitioner had only exhausted state court remedies with respect to a challenge to the  
5 sufficiency of evidence to support one of the elements. *Id.* at 5-8. Petitioner objects, contending  
6 he adequately raised a challenge to the sufficiency of evidence relied on to support additional  
7 elements of the criminal threat charge in a motion filed in the state court of appeal that was  
8 appended to his July 2, 2018 state Supreme Court habeas petition. The court need not resolve the  
9 question of whether petitioner adequately presented a complete sufficiency of evidence claim to  
10 the California Supreme Court, separate from his ineffective assistance of counsel claim, in order  
11 to deny the claim on the merits. *See* 28 U.S.C. § 2254(b)(2). Review of the evidence adduced at  
12 trial, as set forth in the state court of appeal opinion and quoted in the findings and  
13 recommendations, *see id.* at 3-5 (quoting *People v. Becker*, No. C080909, 2018 WL 897499, at  
14 \*1-2 (Cal. Ct. App. Feb. 15, 2018)), shows there was sufficient evidence to support each element  
15 of the criminal threat charge for which petitioner was convicted. For this reason, petitioner's  
16 sufficiency of the evidence claim is denied.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations filed October 14, 2020 are adopted as modified by  
19 this order;
- 20 2. The first amended habeas petition (ECF No. 19) is denied; and
- 21 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.  
22 § 2253.

23 DATED: May 23, 2022.

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26 CHIEF UNITED STATES DISTRICT JUDGE  
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