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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

GARY ALAN EBERLY,
Petitioner,
v.
ROBERT NEUSCHMID,
Respondent.

No. 2:19-CV-1631-MCE-DMC-P

ORDER

Petitioner, a state prisoner proceeding pro se, brings this petition 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 Eastern District of California local rules.

On June 19, 2020, the Magistrate Judge filed findings and recommendations herein which were served on the parties and which contained notice that the parties may file objections within the time specified therein. Timely objections to the findings and recommendations have been filed.

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 under
5 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, the Court finds that issuance of
15 a certificate of appealability is not warranted in this case.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The findings and recommendations filed June 19, 2020, (ECF No. 18) are
18 ADOPTED in full;
- 19 2. Respondent’s motion to dismiss, ECF No. 9, is GRANTED;
- 20 3. The Court declines to issue a certificate of appealability; and
- 21 4. The Clerk of the Court is directed to enter judgment and close this file.

22 IT IS SO ORDERED.

23 Dated: November 20, 2020

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26 MORRISON C. ENGLAND, JR.
27 SENIOR UNITED STATES DISTRICT JUDGE
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