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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL L. MCKUIN,  
Petitioner,  
v.  
ROBERT NEUSCHMID,  
Respondent.

No. 2:19-cv-02153-DAD-DB (HC)  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DENYING  
PETITION FOR HABEAS RELIEF  
(Doc. Nos. 1, 41)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2016 first degree murder conviction entered in the San Joaquin County Superior Court. In his petition for federal habeas relief, petitioner asserts the following claims: (1) ineffective assistance by his appellate counsel in failing to challenge the sufficiency of the evidence to support the conviction; (2) insufficient evidence to support his first degree murder conviction; and (3) ineffective assistance of both trial and appellate counsel in failing to challenge the admissibility of DNA expert testimony at his trial. (Doc. No. 1 at 5–8.) 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 April 6, 2023, the assigned magistrate judge issued findings and recommendations recommending that the pending petition for federal habeas relief be denied. (Doc. No. 41.) Specifically, the findings and recommendations found, as to petitioner’s claim that there was

1 insufficient evidence to support the jury’s guilty verdict as to the first degree murder charge, that  
2 although there was arguably some conflicting evidence introduced at petitioner’s trial, the state  
3 court’s finding that there was sufficient evidence to support his conviction was not objectively  
4 unreasonable. (*Id.* at 11–15.)<sup>1</sup> With respect to petitioner’s ineffective assistance of appellate  
5 counsel claim, the findings and recommendations found that the state court reasonably concluded  
6 that no deficient performance was rendered; noting that in the opening brief on petitioner’s appeal  
7 his counsel raised the issue of the sufficiency of the evidence and cited the decision in *Jackson v.*  
8 *Virginia*, 443 U.S. 307 (1979) in support of that argument. (*Id.* at 16.) Finally, as to petitioner’s  
9 claim that both his trial and appellate counsel rendered ineffective assistance by failing to  
10 challenge the admissibility of DNA expert testimony at his trial, the findings and  
11 recommendations concluded that petitioner had failed to establish any prejudice stemming from  
12 the allegedly deficient performance of his counsel in this regard. (*Id.* at 16–17.) Accordingly, it  
13 was recommended that the pending petition for federal habeas relief be denied. (*Id.* at 17.)

14 The findings and recommendations were served on petitioner with notice that any  
15 objections thereto were to be filed within thirty (30) days of the date of their service. (*Id.* at 17.)  
16 On May 25, 2023, petitioner filed lengthy objections to the pending findings and  
17 recommendations. (Doc. No. 42.)<sup>2</sup> In those objections petitioner did not object to the  
18 recommendation that his ineffective assistance of trial counsel claim be rejected and failed to  
19 provide any basis for questioning the correctness of the analysis of his claims set forth in the  
20 pending findings and recommendations. Rather, petitioner primarily repeats the arguments he  
21 previously presented in support of his petition for federal habeas relief—arguments which were  
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24 <sup>1</sup> The undersigned notes that in recommending that federal habeas relief be denied as to  
25 petitioner’s insufficiency of the evidence claim, the findings and recommendations reflect a  
26 typographical error in stating “[b]ecause fairminded jurists could disagree with the state court’s  
27 decision” and omitting the word “not” after “could” and before “disagree.” (*See* Doc. No. 41 at  
28 15:7.)

<sup>2</sup> It appears that petitioner’s objections were untimely filed even with application of the mail box  
rule. Nonetheless, the court has fully considered those objections as if they were timely filed  
within the thirty-day period provided by the findings and recommendations.

1 thoroughly and appropriately addressed in the findings and recommendations. (*Id.* at 1–46; *see*  
2 *also* Doc. Nos. 1, 38.)<sup>3</sup>

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
4 *de novo* review of the case. Having carefully reviewed the entire file, the undersigned concludes  
5 that the magistrate judge’s findings and recommendations are supported by the record and proper  
6 analysis. Therefore, the findings and recommendations will be adopted and petitioner’s request  
7 for federal habeas relief will be denied on the merits.

8 In addition, the court declines to issue a certificate of appealability. A petitioner seeking  
9 a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his  
10 petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S.  
11 322, 335–36 (2003); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the court  
12 may only issue a certificate of appealability if “jurists of reason could disagree with the district  
13 court’s resolution of [the petitioner’s] constitutional claims or that jurists could conclude the  
14 issues presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S.  
15 at 327; *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the petitioner is not required  
16 to prove the merits of his case, he must demonstrate “something more than the absence of  
17 frivolity or the existence of mere good faith on his . . . part.” *Miller-El*, 537 U.S. at 338. In the  
18 present case, the court concludes that reasonable jurists would not find the court’s determination  
19 that the petition should be denied debatable or wrong, or that the issues presented are deserving of  
20 encouragement to proceed further. Petitioner has not made the required substantial showing of  
21 the denial of a constitutional right. Therefore, the court will decline to issue a certificate of  
22 appealability.

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25 <sup>3</sup> In his objections, petitioner also suggests that he is innocent of the murder of which he was  
26 convicted, that his conviction is an “injustice” and “unconstitutional” and somehow reflects  
27 prejudice against him based upon a perception that he is “lower class.” (Doc. No. 42 at 1.)  
28 However, such arguments are unrelated to any of the claims (insufficiency of the evidence and  
ineffective assistance of trial and appellate counsel) presented in the pending petition for federal  
habeas relief.

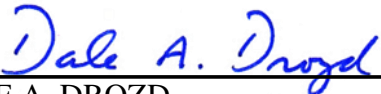
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Accordingly:

1. The findings and recommendations issued on April 6, 2023 (Doc. No. 41) are adopted in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is denied;
3. The court declines to issue a certificate of appealability (28 U.S.C. § 2253(c)); and
4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: December 8, 2023

  
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DALE A. DROZD  
UNITED STATES DISTRICT JUDGE