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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH LLOYD THURMAN,  
  
Petitioner,  
  
v.  
  
RAYMOND JOHNSON, Warden,  
  
Respondent.

No. 2:20-cv-0079-KJM-EFB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 13, 2021, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Respondent has filed objections to the findings and recommendations. See ECF No. 38.


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. The court notes that the case *Dixon v. Baker*, 847 F.3d 714, 720-21 (9th Cir. 2017), cited by the magistrate judge at page 5, lines 22–44, of the

1 findings and recommendations, is precedential. “A petitioner cannot have had effective  
2 assistance of counsel if he had no counsel at all.” *Id.* at 721. Requiring petitioner to come  
3 forward with additional evidence over and above the fact that he lacked counsel to show “good  
4 cause” for the court to stay his claims for ineffective assistance of counsel, as respondent argues  
5 in his objections, *see generally* ECF No. 38, is inconsistent with this Circuit’s previous decision  
6 in *Blake v. Baker*, 745 F.3d 977 (9th Cir. 2014) and the Supreme Court’s decision in *Martinez v.*  
7 *Ryan*, 566 U.S. 1 (2012). Accordingly, having carefully reviewed the file, the court finds the  
8 findings and recommendations to be supported by the record and by proper analysis.

9 IT IS HEREBY ORDERED that:

- 10 1. The findings and recommendations filed September 13, 2021, are adopted in full; and
- 11 2. This action is STAYED pending petitioner’s exhaustion of his ineffective assistance of  
12 counsel claims in the California Supreme Court.

13 DATED: December 13, 2021.

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17 CHIEF UNITED STATES DISTRICT JUDGE  
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