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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN KAKOWSKI,
Petitioner,
v.
MARCUS POLLARD, Warden,
Respondent.

No. 2:20-cv-00549 KJM GGH P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an 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 December 1, 2020, 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 twenty-one days. ECF No. 23. Neither party has filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court

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1 . . .”). Having reviewed the file, the court finds the findings and recommendations to be
2 supported by the record and by the proper analysis.

3 The court writes separately here only to address petitioner’s argument that his counsel
4 should have done more to prevent the court from imposing a consecutive sentence, *see* First Am.
5 Pet. at 26–27, ECF No. 13; Answer at 8, ECF No. 21, to the extent the magistrate judge did not
6 expressly consider the argument, *see* F&Rs at 10–11. This claim could not succeed because
7 there is no reasonable probability that counsel could have persuaded the state court to impose a
8 nonconsecutive sentence. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (requiring a
9 petitioner to show that counsel’s deficient performance “prejudiced the defense”). A consecutive
10 sentence was mandatory under California law. *See People v. Kakowski*, C086377, slip op. at 8
11 (Cal. Ct. App. Oct. 23, 2019), ECF No. 20-10.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations filed December 1, 2020, are adopted in full;
- 14 2. Petitioner’s first amended petition (ECF No. 13) is denied on its merits; and
- 15 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.
16 § 2253.

17 DATED: July 13, 2021.

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21 CHIEF UNITED STATES DISTRICT JUDGE
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