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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRYON C. JOHNSON,
Petitioner,
v.
DANIEL E. CUEVA,
Respondent.

No. 2:20-cv-02060-DAD-CKD (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION

(Doc. No. 28)

Petitioner Bryon C. Johnson is a former state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. 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 August 23, 2022, the assigned magistrate judge issued findings and recommendations recommending that petitioner’s federal habeas petition be summarily dismissed based on a lack of jurisdiction because “there is no indication that petitioner is being held in state custody based on a ‘violation of the Constitution or laws or treaties of the United States.’” (Doc. No. 28 at 2) (quoting 28 U.S.C. § 2254(a)). Specifically, the findings and recommendations point out that petitioner is seeking an order directing federal authorities to advise the California Department of Corrections and Rehabilitation that a federal hold or warrant, which does not exist, be lifted. (*Id.* at 1-2.) The pending findings and recommendations were served upon petitioner and contained

1 notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at
2 3.) To date, petitioner has not filed any objections and the time in which to do so has passed.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
4 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
5 pending findings and recommendations are supported by the record and proper analysis.

6 Having concluded that the pending petition must be dismissed, the court also declines to
7 issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no absolute
8 right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*
9 *Cockrell*, 537 U.S. 322, 335-36 (2003). If a court denies a petitioner’s petition, the court may
10 only issue a certificate of appealability when a petitioner makes a substantial showing of the
11 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where, as here, the court denies habeas
12 relief on procedural grounds without reaching the underlying constitutional claims, the court
13 should issue a certificate of appealability “if jurists of reason would find it debatable whether the
14 petition states a valid claim of the denial of a constitutional right and that jurists of reason would
15 find it debatable whether the district court was correct in its procedural ruling.” *Slack v.*
16 *McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists
17 would not find the court’s determination that the pending petition must be dismissed to be
18 debatable or wrong. Thus, the court declines to issue a certificate of appealability.

19 Accordingly,

- 20 1. The findings and recommendations issued on August 23, 2022 (Doc. No. 28) are
21 adopted in full;
- 22 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 23 3. The court declines to issue a certificate of appealability; and
- 24 4. The Clerk of the Court is directed to close this case.

25 IT IS SO ORDERED.

26 Dated: November 17, 2022

27 
28 UNITED STATES DISTRICT JUDGE