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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN ANTHONY BUNCH,  
Petitioner,  
v.  
D. SAMUELS,  
Respondent.

No. 2:21-cv-01209-DAD-KJN (HC)  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DENYING  
PETITION FOR HABEAS RELIEF  
(Doc. Nos. 1, 23)

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 2017 convictions for murder during the special circumstance of an attempted robbery and possession of a firearm by a felon which were entered in the Sacramento County Superior Court. In his petition for federal habeas relief, petitioner asserts the following claims: (1) there was insufficient evidence to support his murder conviction; (2) there was insufficient evidence to support his conviction for the firearm possession offense; (3) the trial court violated his right to due process in denying his motion brought pursuant to *People v. Marsden*, 2 Cal. 3d 118 (1970); and (4) prosecutorial misconduct. (Doc. No. 1 at 4–5.) 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 May 25, 2023, the assigned magistrate judge issued findings and recommendations recommending that the pending petition for federal habeas relief be denied. (Doc. No. 23.)

1 Specifically, the findings and recommendations found as to petitioner’s insufficiency of the  
2 evidence claims, that the state court had reasonably rejected those claims (as to the sufficiency of  
3 the evidence regarding the murder, the felony murder special circumstance and the possession of  
4 a firearm charge) and that the state court’s determination was neither an unreasonable application  
5 of clearly established federal law or based on an unreasonable application of the facts. (*Id.* at 9–  
6 17.) In addition, the magistrate judge concluded that the state court’s rejection of petitioner’s  
7 claim that the state court had erred in denying his post-trial *Marsden* motion, as well as its ruling  
8 that petitioner had failed to make a showing of prejudice in support of any claim that his  
9 counsel’s performance had been deficient, was not objectively unreasonable. (*Id.* at 17–23.)  
10 Finally, the findings and recommendations concluded that the state court’s rejection of  
11 petitioner’s claim that the prosecutor had in three instances engaged in prosecutorial misconduct  
12 during closing argument was not contrary to, or an unreasonable application of, clearly  
13 established federal law and was not a determination based on an unreasonable application of the  
14 facts. (*Id.* at 23–28.) Accordingly, it was recommended that the pending petition for federal  
15 habeas relief be denied. (*Id.* at 29.)

16 The findings and recommendations were served on petitioner with notice that any  
17 objections thereto were to be filed within fourteen (14) days of the date of their service. (*Id.* at  
18 29.) On June 26, 2023, petitioner requested an extension of time in which to file objections to the  
19 pending findings and recommendations until August 10, 2023. (Doc. No. 24.) On June 28, 2023,  
20 that request was granted by the magistrate judge. (Doc. No. 25.) On September 21, 2023, after  
21 the August 10 deadline for filing objections had passed, petitioner filed another request for  
22 extension time to November 20, 2023, to file his objections. (Doc. No. 26.) Despite the untimely  
23 nature of his request, on October 5, 2023, the magistrate judge granted it and directed that any  
24 objections to the pending findings and recommendations be filed within sixty (60) days, i.e.,  
25 December 4, 2023. (Doc. No. 27.) Despite having been granted two lengthy extensions of time  
26 to do so, no objections to the pending findings and recommendations have been filed with the  
27 court by petitioner, and the time for doing so has passed even given a generous application of the  
28 mailbox rule.

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

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

21 Accordingly:

- 22 1. The findings and recommendations issued on May 25, 2023 (Doc. No. 23) are  
23 adopted in full;
- 24 2. The petition for writ of habeas corpus (Doc. No. 1) is denied;

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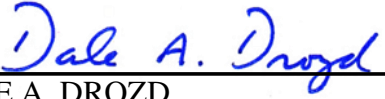
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3. The court declines to issue a certificate of appealability (28 U.S.C. § 2253(c)); and

4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: December 15, 2023

  
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DALE A. DROZD  
UNITED STATES DISTRICT JUDGE