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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN MCCARTER,
Petitioner,
v.
RON BROOMFIELD, et al.,
Respondents.

No. 2:22-cv-00462-KJM-CKD 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 2, 2022, 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. Neither party has filed objections to the findings and recommendations.

The court presumes 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 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the court has
4 considered whether to issue a certificate of appealability. Before petitioner can appeal this
5 decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
6 Where the petition is denied on the merits, a certificate of appealability may issue under 28
7 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
8 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
9 appealability indicating which issues satisfy the required showing or must state the reasons why
10 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
11 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that
12 jurists of reason would find it debatable whether the district court was correct in its procedural
13 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid
14 claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
15 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 478 (2000)). For the reasons set forth in the
16 magistrate judge’s findings and recommendations, the court finds issuance of a certificate of
17 appealability is not warranted in this case.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The findings and recommendations filed December 2, 2022 (ECF No. 24), are adopted
20 in full.
- 21 2. Petitioner’s motion for a *Rhines* stay (ECF No. 22) is denied.
- 22 3. Respondent’s motion to dismiss (ECF No. 17) is granted.
- 23 4. The petition for writ of habeas corpus is dismissed without prejudice as unexhausted.
- 24 3. The clerk of court shall close this action.
- 25 4. The court declines to issue the certificate of appealability referenced in 28 U.S.C.
26 § 2253.

27 DATED: January 12, 2023.

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CHIEF UNITED STATES DISTRICT JUDGE