

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LATRALE D. WAY,
Petitioner,
v.
KATHLEEN ALLISON,
Respondent.

No. 2:22-cv-01351-DAD-EFB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION DUE TO
PETITIONER'S FAILURE TO PROSECUTE
AND FAILURE TO COMPLY WITH A
COURT ORDER

(Doc. Nos. 13, 16)

Petitioner Latrale D. Way is a state prisoner proceeding *pro se* with a petition for a 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 May 10, 2023, the assigned magistrate judge issued findings and recommendations recommending that this action be dismissed, without prejudice, due to petitioner's failure to comply with a court order and failure to prosecute this action. (Doc. No. 16.) The findings and recommendations were served upon petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 1–2.) To date, petitioner has not filed any objections and the time in which to do so has passed.

////

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

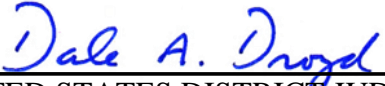
4 Having concluded that the pending petition must be dismissed, the court also declines to
5 issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no absolute
6 right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*
7 *Cockrell*,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

17 Accordingly,

- 18 1. The findings and recommendations issued on May 10, 2023 (Doc. No. 16) are
19 adopted in full;
- 20 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 21 3. Respondent’s pending motion to dismiss (Doc. No. 13) is denied as having been
22 rendered moot by this order;
- 23 4. The court declines to issue a certificate of appealability; and
- 24 5. The Clerk of the Court is directed to close this case.

25 IT IS SO ORDERED.

26 Dated: June 27, 2023

27 
28 UNITED STATES DISTRICT JUDGE