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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC C. OLSON,
Petitioner,
v.
SUPERIOR COURT, AMADOR
COUNTY,
Respondent.

No. 2:23-cv-2384 DJC KJN P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application 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 October 24, 2023, the Magistrate Judge filed findings and recommendations herein which were served on Petitioner, and which contained notice to Petitioner that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner filed objections to the findings and recommendations.

Petitioner contends that his petition seeks relief under California’s Racial Justice Act of 2020 which was not available at the time of his conviction. (ECF No. 14.) However, 28 U.S.C. § 2254 only provides this Court with the authority to review

1 violations of federal law, not claims arising under state statutory law.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
3 304, this Court has conducted a *de novo* review of this case.¹ Having carefully
4 reviewed the entire file, the Court finds the findings and recommendations to be
5 supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations filed October 24, 2023, are adopted in
8 full;
- 9 2. This action is dismissed without prejudice; and
- 10 3. The Court declines to issue the certificate of appealability referenced in 28
11 U.S.C. § 2253 as Petitioner has not made a substantial showing of the denial of a
12 constitutional right, *see* 28 U.S.C. § 2253(c)(2).

13
14 IT IS SO ORDERED.

15 Dated: December 1, 2023


16 Hon. Daniel J. Calabretta
17 UNITED STATES DISTRICT JUDGE

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21 _____
22 ¹ Although Petitioner has filed an appeal of the Magistrate Judge's Findings and
23 Recommendations (ECF No. 16), that does not deprive this Court of jurisdiction to
24 review the Findings and Recommendations. *See e.g., Poye v. Parker*, No. 1:08-cv-
25 00497-OWW-SMS, 2008 WL 4532515, at *1-2 (E.D. Cal. Oct. 8, 2008). "Where the
26 deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, or
27 reference to a non-appealable order, is clear to the district court, it may disregard the
28 purported notice of appeal and proceed with the case, knowing that it has not been
deprived of jurisdiction." *Ruby v. Secretary of U.S. Navy*, 365 F.2d 385, 389 (9th Cir.
1966). A Magistrate Judge's Findings and Recommendations are not a final
judgement with "subsequent intervention by the district court" and the notice of
appeal after before the Findings and Recommendations are adopted is
premature. *Serine v. Peterson*, 989 F.2d 371 (9th Cir. 1993).