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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL WILKERSON,

Petitioner,

vs.

ROBERT HORRELL, Warden,

Respondent.

CASE NO. 08cv857 WQH (PCL)

ORDER

HAYES, Judge:

The matter before the Court is the review of the Report and Recommendation (Doc. # 15) filed on December 10, 2008 by United States Magistrate Judge Peter C. Lewis.

Background

On May 12, 2008, Petitioner Michael Wilkerson, a California state prisoner filing *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. # 1). On July 10, 2008, Petitioner filed the First Amended Petition (“FAP”). (Doc. # 3). The FAP asserts claims for (1) ineffectiveness of counsel; and (2) unfairness of the trial proceedings. The FAP states that Petitioner did not raise the second claim for relief in the California Supreme Court. *FAP*, p. 7.

On December 10, 2008, United States Magistrate Peter C. Lewis issued a Report and Recommendation recommending that this Court dismiss the FAP on grounds that Petitioner failed to exhaust his state court remedies regarding the second claim for relief. (Doc. # 15). The Magistrate Judge ordered the parties to file any objections to the Report and

1 Recommendation on or before December 31, 2008.

2 On January 15, 2009, Petitioner filed an objection to the Report and Recommendation.
3 (Doc. # 17). Petitioner's objection states in full:

4 Petitioner filed additional pleading in accordance with the Court. I submit a
5 series of handwritten communications, which was incoherent, do to a heart
6 attack , this heart attack, has been covered up. I had a stroke, and a heart attack.
7 Which would prevent me July 16 2008, that why it is difficult to ascertain what
8 Petitioner is requesting, the reason, I could not, they try to, voluntarily
9 dismissing the Petition while I was in the hospital July 16 2008 thru Sept.

10 *Objection*, p. 1.

11 Respondent has not filed objections to the Report and Recommendation.

12 Applicable Law

13 The duties of the district court in connection with the Report and Recommendation of
14 a Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28
15 U.S.C § 636(b). The district judge “must make a de novo determination of those portions of
16 the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in
17 part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b). The
18 district court need not review *de novo* those portions of a Report and Recommendation to
19 which neither party objects. *Wang v. Masaitis*, 416 F.3d 992, 100 n. 13 (9th Cir. 2005); *United*
20 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).

21 Ruling of the Court

22 Neither party objected to the Magistrate Judge's conclusion that Petitioner failed to
23 exhaust his state court remedies with respect to the FAC's second claim for relief. Petitioner's
24 objection does not assert that the Report and Recommendation erred in recommending that this
25 Court dismiss the FAC on grounds that Petitioner failed to exhaust his state court remedies.
26 The Court has reviewed Report and Recommendation and the portions to which Petitioner
27 objected de novo, and concludes that the Magistrate Judge correctly concluded that the FAC
28 should be dismissed as unexhausted.

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Conclusion

IT IS HEREBY ORDERED that the Report and Recommendation (Doc. # 15) is **ADOPTED**. The First Amended Petition for Writ of Habeas Corpus (Doc. # 3) is **DENIED**.

DATED: January 29, 2009


WILLIAM Q. HAYES
United States District Judge