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

DAVID ESCOBEDO ACERO,

Petitioner,

vs.

TERRY MCDONALD, Warden,

Respondent.

CASE NO. 08cv1921 WQH (NLS)

ORDER

HAYES, Judge:

The matter before the Court is the review of the Report and Recommendation (Doc. # 10) filed by Magistrate Judge Nita L. Stormes.

On October 17, 2008, Petitioner filed the Petition for Writ of Habeas Corpus (Doc. # 1) pursuant to 28 U.S.C. 2254. The Petition alleges that Petitioner was denied his fourteenth amendment due process right to a fair sentencing hearing because the trial court relied on a supplemental statement in aggravation that was untimely and consisted of incompetent evidence. Petitioner requests that his sentence be reversed and the matter remanded for a new sentencing hearing.

On June 29, 2009, the Magistrate Judge issued the Report and Recommendation recommending that this Court deny the Petition in its entirety. The Report and Recommendation concluded that "Petitioner has failed to show that the state courts' determinations were contrary to or an unreasonable application of clearly established federal law, or that they were based on an unreasonable determination of the facts." *R&R*, p. 7. The Report and Recommendation required the parties to file any objections no later than July 20, 2009. No party has filed any objections to the

1 Report and Recommendation.

2 **Standard of Review**

3 The duties of the district court in connection with a Report and Recommendation of a
4 Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. §
5 636(b)(1). When the parties object to a Report and Recommendation, “[a] judge of the [district] court
6 shall make a de novo determination of those portions of the [Report and Recommendation] to which
7 objection is made.” 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). When
8 no objections are filed, the district court need not review the Report and Recommendation de novo.
9 *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d
10 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may “accept, reject, or modify, in whole or
11 in part, the findings or recommendations made by the magistrate judge.” Fed. R. Civ. P. 72(b); 28
12 U.S.C. § 636(b)(1).

13 **Ruling of the Court**

14 Neither party filed objections to the Report and Recommendation. The Court has reviewed
15 all aspects of the Report and Recommendation of the Magistrate Judge filed on June 29, 2009, and
16 adopts all portions of the Report and Recommendation. The Report and Recommendation correctly
17 concluded that denial of the Petition was proper on grounds that “Petitioner has failed to show that
18 the state courts’ determinations were contrary to or an unreasonable application of clearly established
19 federal law, or that they were based on an unreasonable determination of the facts.” *R&R*, p. 7.

20 IT IS HEREBY ORDERED that all portions of the Report and Recommendation (Doc. # 8)
21 are **ADOPTED**. The Petition for Writ of Habeas Corpus (Doc. # 1) is **DENIED**.

22 DATED: August 10, 2009

23 
24 **WILLIAM Q. HAYES**
25 United States District Judge
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