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8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA	
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11	JAMES E. WESTBROOKS,	CASE NO. 09-CV-136 JLS (POR)
12	Petitioner,	ORDER: (1) ADOPTING REPORT AND RECOMMENDATION, (2)
13	VS.	DENYING PETITION FOR WRIT OF HABEAS CORPUS, AND (3)
14	DIRECTOR OF CALIFORNIA	DENYING CERTIFICATE OF APPEALABILITY
15	DEPARTMENT OF CORRECTIONS,	(Doc. No. 15)
16	Respondent.	
17	Presently before the Court is Petitioner's petition for a writ of habeas corpus pursuant to 28	
18	U.S.C. § 2254 and Magistrate Judge Louisa S. Porter's Report and Recommendation ("R&R")	
19 20	advising this Court to deny the petition. (Doc. Nos. 1 & 15.)	
20 21	Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set forth the	
21 22	duties of a district court in connection with a magistrate judge's report and recommendation. "The	
22	district court must make a <i>de novo</i> determination of those portions of the report to which objection	
23 24	is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations	
25	made by the magistrate." 28 U.S.C. 636(b)(1)(c); see also United States v. Remsing, 874 F.2d 614,	
26	617 (9th Cir. 1989); United States v. Raddatz, 447 U.S. 667, 676 (1980). However, in the absence of	
27	timely objection, the Court need "only satisfy itself that there is no clear error on the face of the	
28	record." Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (citing Campbell v. U.S. Dist. Court,	

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501 F.2d 196, 206 (9th Cir. 1974)).

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In this case, Petitioner has failed to timely file objections to Magistrate Judge Porter's R&R.
Having reviewed the R&R, the Court finds that it is thorough, well reasoned, and no contains no clear
error. Therefore, the Court ADOPTS the R&R in full and DENIES the petition.

5 Finally, this Court is under an obligation to determine whether a certificate of appealability 6 should issue in this matter. A certificate of appealability is authorized "if the applicant has made a 7 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner 8 satisfies this standard by demonstrating that jurists of reason could disagree with the district court's 9 resolution of his constitutional claims or that jurists could conclude the issues presented are adequate 10 to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); see 11 also Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Court must either (1) grant the certificate of 12 appealability indicating which issues satisfy the required showing or (2) state why a certificate should 13 not issue. Fed. R. App. P. 22(b).

This petition raised two legal issues: whether the jury instructions were constitutionally deficient and whether this constitutes structural error. Neither of these merit a certificate of appealability. The Court finds that reasonable jurists would agree that the California Court of Appeal's conclusions were neither contrary to nor an unreasonable application of clearly established federal law. Accordingly, no certificate of appealability should issue.

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IT IS SO ORDERED.

DATED: April 20, 2010

Honorable Janis L. Sammartino United States District Judge