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

KAWAN WILLIAMS,

Petitioner,

vs.

LARRY SMALL, EDMUND G. BROWN,
JR.,

Respondents.

CASE NO. 09-CV-1426 JLS (WMC)

**ORDER: (1) ADOPTING REPORT
AND RECOMMENDATION;
(2) DENYING REQUEST FOR
EVIDENTIARY HEARING;
(3) DENYING PETITION FOR
WRIT OF HABEAS CORPUS; AND
(4) DENYING CERTIFICATE OF
APPEALABILITY**

(ECF No. 22)

Presently before the Court is Petitioner Kawan Williams’s petition for writ of habeas corpus and request for evidentiary hearing. (ECF No. 1.) Also before the Court is Magistrate Judge William McCurrine’s report and recommendation advising the Court to deny Petitioner’s request for evidentiary hearing and deny his petition (R&R, ECF No. 22).

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district court’s duties in connection with a magistrate judge’s report and recommendation. The district court must “make a de novo determination of those portions of the report to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely objection, the Court “need only satisfy itself that there is no clear error on the face of the record in

1 order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing *Campbell*
2 *v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

3 Here, Petitioner failed to timely file objections to Magistrate Judge McCurrine’s report and
4 recommendation. Having reviewed the report and recommendation, the Court finds that it is thorough,
5 well reasoned, and contains no clear error. Accordingly, the Court (1) **ADOPTS** Magistrate Judge
6 McCurrine’s report and recommendation, (2) **DENIES** Petitioner’s request for evidentiary hearing,
7 and (3) **DENIES** Petitioner’s petition for writ of habeas corpus.

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

17 Petitioner requests relief from his conviction for three counts of first degree robbery and one
18 count of being a felon in possession of a firearm. The Court finds that reasonable jurists would agree
19 with this Court’s resolution of Petitioner’s constitutional claims. Petitioner challenges two of the trial
20 court’s evidentiary rulings, but he fails to establish that admission of the challenged evidence “fatally
21 infected [his] trial” by rendering it fundamentally unfair. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 897
22 (9th Cir. 1996) (internal quotation marks omitted). And viewing the evidence in the light most
23 favorable to the prosecution, a rational trier of fact could have found Petitioner guilty of being a felon

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1 in possession of a firearm. *Juan H. v. Allen*, 408 F.3d 1262, 1275 (9th Cir. 2005). Resolution of these
2 claims was not a close question. Accordingly, the Court **DENIES** a certificate of appealability.

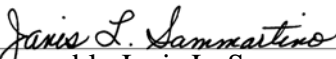
3 This Order concludes the litigation in this matter. The Clerk shall close the file.

4 **IT IS SO ORDERED.**

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6 DATED: July 11, 2011

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Honorable Janis L. Sammartino
United States District Judge

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