

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

GERALDO OJITO,

vs.

KEN CLARK, warden,

Plaintiff,

Defendant.

CASE NO. 09cv2127-LAB (JMA)

**ORDER ADOPTING REPORT
AND RECOMMENDATION; AND
ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner, a prisoner in state custody, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for two counts of second degree murder. This matter was referred to Magistrate Judge Jan Adler for report and recommendation. On March 2, 2011, Judge Adler issued his report and recommendation (the "R&R"), recommending that the petition be denied. Objections were due March 25, 2011, but Petitioner filed none and did not seek additional time within which to do so.

A district court has jurisdiction to review a Magistrate Judge's report and recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court 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). The Court reviews de novo those portions of the R&R to which specific written objection is made. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). "The statute makes it clear that the district judge must

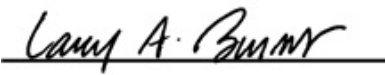
1 review the magistrate judge's findings and recommendations de novo *if objection is made*,
2 but not otherwise." *Id.* When no objections are filed, the Court need not review the report
3 and recommendation de novo. *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005).
4 See also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003)
5 (applying *Reyna-Tapia* to habeas review).

6 The Court has reviewed the R&R, finds it to be correct, and **ADOPTS** it. The petition
7 is **DENIED**.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: October 5, 2011


HONORABLE LARRY ALAN BURNS
United States District Judge