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

WYDELL D. JONES,

Petitioner,

vs.

JOHN MARSHALL, Warden,

Respondent.

CASE NO. 10 CV 0376 MMA (BGS)

**ORDER ADOPTING REPORT
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE;**

[Doc. No. 20]

**OVERRULING PETITIONER'S
OBJECTIONS;**

[Doc. No. 34]

**DENYING PETITION FOR WRIT
OF HABEAS CORPUS**

[Doc. No. 1]

Petitioner Wydell Dupree Jones, a state prisoner proceeding pro se and *in forma pauperis*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in San Diego County Superior Court, case number SCD202155. [Doc. No. 1.] Respondent filed an answer on April 26, 2010 [Doc. No. 10], and Petitioner filed a traverse on July 19, 2010 [Doc. No. 19]. The matter was referred to United States Magistrate Judge Bernard G. Skomal for preparation of a Report and Recommendation under 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(d). Judge Skomal issued his Report on May 31, 2011. [Doc. No. 20.]

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1 Judge Skomal issued a well-reasoned and thorough Report, forty-six pages in length,
2 recommending the petition be denied in its entirety. Petitioner filed lengthy objections with
3 supporting exhibits, challenging the findings and conclusions of law set forth in the Report and
4 Recommendation. [Doc. No. 34, 36.] Respondent did not file an objection to the Report, nor a
5 response to Petitioner’s objections.

6 Under 28 U.S.C. § 636(b)(1), in reviewing a magistrate judge’s report and
7 recommendation, the district court “shall make a *de novo* determination of those portions of the
8 report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the
9 findings or recommendations made by the magistrate judge.” Here, Petitioner objects to the
10 entirety of the Report. [Doc. No. 34.] Petitioner challenges each of the Magistrate Judge’s
11 conclusions, arguing primarily that, “petitioner’s actual claims and contentions have been and are
12 being ignored or misrepresented by respondent, and now so by the magistrate court in its denial
13 recommendation.” [See, e.g., *id.* at p.3, 18.] The Court has conducted a *de novo* review of the
14 entire record and considered the merits of each of Petitioner’s objections. With respect to
15 Petitioner’s objections to the findings of fact detailed in the Report, the Court overrules the
16 objections, as they are amply supported by the record. Contrary to Petitioner’s assertion, Judge
17 Skomal’s Report accurately reflects the pertinent facts and proceedings resulting in Petitioner’s
18 conviction. Petitioner’s objections to the conclusions of law are similarly without merit, and are
19 therefore, overruled. Judge Skomal identified the correct legal standards, applied each standard
20 correctly, considered relevant case law, and reached sound conclusions that this Court has no
21 reason to reject.

22 Having reviewed the Report and Recommendation and the files and records herein, the
23 Court **ADOPTS** the Report and Recommendation in its entirety. Accordingly, the Court **DENIES**
24 Petitioner’s petition for writ of habeas corpus.

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CERTIFICATE OF APPEALABILITY

“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11 foll. 28 U.S.C. § 2254. A petitioner may not seek an appeal of a claim arising out of a state court detention unless the petitioner first obtains a certificate of appealability from a district judge or circuit judge under 28 U.S.C. § 2253. Fed. R. App. Proc. 22(b). Under 28 U.S.C. § 2253(c), a certificate of appealability will issue only if the petitioner makes a substantial showing of the denial of a constitutional right.

For the reasons set forth in the Report and Recommendation, Petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability should not issue in this action.

IT IS SO ORDERED.

DATED: March 19, 2012



Hon. Michael M. Anello
United States District Judge