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

ANTHONY L. TAYLOR,

Petitioner,

vs.
TERRI GONZALEZ, Warden;
ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA,

Respondents.

CASE NO. 11cv1109 WQH (RBB)
ORDER

HAYES, Judge:

The matter before the Court is the Report and Recommendation (ECF No. 15) of the Honorable Magistrate Judge Ruben B. Brooks recommending that the Court deny Petitioner's Motion for Stay and Abeyance. (ECF No. 7).

BACKGROUND

On May 19, 2011, Petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 asserting claims that his due process rights were violated by his sentence and that he received ineffective assistance of counsel by his trial counsel (ECF No. 1). On October 31, 2011, Petitioner filed a Motion for Stay and Abeyance seeking a stay while he filed and exhausted a claim of ineffective assistance of his appellate counsel in state court. (ECF No. 7).

1 On June 28, 2012, the Honorable Magistrate Judge issued a Report and
2 Recommendation recommending that the Court deny Petitioner's Motion for Stay and
3 Abeyance on the grounds that: 1) the Petition is not a mixed petition containing some
4 exhausted and some unexhausted claims and 2) the statute of limitation has run on Petitioner's
5 unexhausted claim. (ECF No. 15).

6 The Magistrate Judge stated:

7 This Report and Recommendation will be submitted to United States
8 District Court Judge William Q. Hayes, pursuant to the provisions of
9 28 U.S.C. § 636(b)(1). Any party may file written objections with the
10 court and serve a copy on all parties on or before July 20, 2012. The
11 document should be captioned, "Objections to Report and
12 Recommendation" Any reply to the objections shall be served and filed
13 on or before August 3, 2012. The parties are advised that failure to file
14 objections within the specified time may waive the right to appeal the
15 district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
16 1991).

17 *Id.* at 23-24.

18 To date, neither party has filed objections to the Report and Recommendation.

19 DISCUSSION

20 The duties of the district court in connection with a Report and Recommendation of a
21 Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §
22 636(b)(1). When a party objects to a Report and Recommendation, "[a] judge of the [district]
23 court shall make a de novo determination of those portions of the [Report and
24 Recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). When no objections
25 are filed, the district court need not review the Report and Recommendation de novo. *See*
26 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d
27 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may "accept, reject, or modify, in
28 whole or in part, the findings or recommendations made by the magistrate judge." Fed. R. Civ.
P. 72(b); *see also* 28 U.S.C. § 636(b)(1).


Neither party objected to the Magistrate Judge's Report and Recommendation in this
case. This Court has reviewed the record and the Report and Recommendation in their
entirety. The Court finds that the Magistrate Judge correctly recommended that the Motion
for Stay and Abeyance be DENIED.

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CONCLUSION

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 15) is adopted in its entirety. Petitioner's Motion for Stay and Abeyance (ECF No. 7) is DENIED.

DATED: August 23, 2012


WILLIAM Q. HAYES
United States District Judge