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6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
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9 MAURICE CARTER,  
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Petitioner,  
v.  
CYNTHIA Y. TAMPKINS ,  
Respondent.

Case No.: 16-cv-2129-WQH-BGS

**ORDER**

HAYES, Judge:

The matter before the Court is the review of the Report and Recommendation issued by United States Magistrate Judge (ECF No. 9) recommending that the Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) be denied.

On October 17, 2018, the Court ordered Petitioner to file any objections to the Report and Recommendation by November 7, 2018. (ECF No. 9). No objections have been filed.

The duties of the district court in connection with a report and recommendation of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b). The district judge 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." 28 U.S.C. § 636(b). The district court need not review de novo those portions of a Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)

1 (“Neither the Constitution nor the [Federal Magistrates Act] requires a district judge to  
2 review, de novo, findings and recommendations that the parties themselves accept as  
3 correct.”).

4 The Court has reviewed the Report and Recommendation, the record, and the  
5 submissions of the parties. The Court finds that the Magistrate Judge correctly  
6 recommended that the Petition for Writ of Habeas Corpus filed by the Petitioner be denied.


7 A certificate of appealability must be obtained by a petitioner in order to pursue an  
8 appeal from a final order in a section 2254 habeas corpus proceeding. *See* 28 U.S.C. §  
9 2253(c)(1)(A); Fed R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules Governing  
10 Section 2254 Cases, “[t]he district court must issue or deny a certificate of appealability  
11 when it enters a final order adverse to the applicant.”

12 A certificate of appealability should be issued only where the petition presents “a  
13 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). It must  
14 appear that reasonable jurists could find the district court’s assessment of the petitioner’s  
15 constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
16 The Court finds that for the reasons cited in the Report and Recommendation, Petitioner  
17 has failed to make a substantial showing of the denial of a constitutional right. The Court  
18 will not grant a certificate of appealability.

19 **Conclusion**

20 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 9) is  
21 adopted in its entirety and the Petition for Writ of Habeas Corpus (ECF No. 1) is DENIED.  
22 A certificate of appealability is DENIED. The Clerk of the Court shall enter judgment for  
23 Respondent and against Petitioner and close the case.

24 Dated: December 18, 2018

25   
26 Hon. William Q. Hayes  
27 United States District Court  
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