

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

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

FREDERICK J. PALMER,

Petitioner,

v.

RAYMOND MADDEN,

Respondent.

Case No. 16-cv-2130-BAS-BGS

ORDER:

- (1) ADOPTING REPORT AND RECOMMENDATION [ECF No. 12] IN ITS ENTIRETY,**
- AND**
- (2) DENYING PETITION FOR WRIT OF HABEAS CORPUS [ECF No. 1]**

On August 22, 2016, Plaintiff Frederick Palmer (the “Petitioner”) filed a petition for a writ of habeas corpus (the “Petition”) pursuant to 28 U.S.C. §2254. (ECF No. 1.) The Petitioner was sentenced to eleven years imprisonment after a jury found Petitioner guilty of selling a controlled substance and misdemeanor resisting arrest. (ECF No. 12.) The Petition raises several grounds for relief from his conviction and subsequent incarceration by the State of California, including multiple errors by the trial court, ineffective assistance of counsel, and unauthorized sentence. (ECF No. 1.) The Court referred this matter to United States Magistrate Judge Bernard G. Skomal. The State of California filed a response to the Petition on

1 February 14, 2017, and lodged various documents concerning Petitioner’s state court
2 proceedings. (ECF Nos. 10, 11.)

3 On September 22, 2017, Judge Skomal issued a Report and Recommendation
4 (“R&R”), recommending that this Court deny relief for all grounds raised in the
5 Petition. (ECF No. 12.) The time for filing objections to the R&R expired on
6 October 13, 2017. (*Id.*) To date, neither party has filed any objections.

7 **I. ANALYSIS**

8 The Court reviews *de novo* those portions of an R&R to which objections are
9 made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or
10 in part, the findings or recommendations made by the magistrate judge.” *Id.* “The
11 statute makes it clear,” however, “that the district judge must review the magistrate
12 judge’s findings and recommendations *de novo if objection is made*, but not
13 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en
14 banc) (emphasis in original); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
15 1226 (D. Ariz. 2003) (concluding that where no objections were filed, the district
16 court had no obligation to review the magistrate judge’s report). “Neither the
17 Constitution nor the statute requires a district judge to review, *de novo*, findings and
18 recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328
19 F.3d at 1121. This legal rule is well-established in the Ninth Circuit and this district.
20 *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005) (“Of course, *de novo*
21 review of a[n] R & R is only required when an objection is made to the R & R.”);
22 *Nelson v. Giurbino*, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopting
23 report in its entirety without review because neither party filed objections to the
24 report despite the opportunity to do so); *see also Nichols v. Logan*, 355 F. Supp. 2d
25 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

26 In this case, the deadline for filing objections was October 13, 2017. (ECF No.
27 12.) However, no objections have been filed, and neither party has requested
28 additional time to do so. Consequently, the Court may adopt the R&R on that basis

1 alone. *See Reyna-Tapia*, 328 F.3d at 1121.

2 Nonetheless, having conducted a *de novo* review of the Petition, the Response,
3 and the magistrate judge's R&R, the Court concludes that Judge Skomal's reasoning
4 is sound. The R&R is thorough, well-reasoned, and correctly concludes that the
5 Petitioner has failed to show he is entitled to the issuance of a federal writ of habeas
6 corpus. Therefore, the Court hereby approves and **ADOPTS IN ITS ENTIRETY**
7 the R&R. *See* 28 U.S.C. § 636(b)(1).

8 **II. CONCLUSION & ORDER**

9 Having reviewed the R&R and there being no objections, the Court **ADOPTS**
10 **IN ITS ENTIRETY** the R&R. (ECF No. 12.) The Petition (ECF No. 1) is
11 **DENIED.**

12 **IT IS SO ORDERED.**

13
14 **DATED: October 24, 2017**


15 **Hon. Cynthia Bashant**
16 **United States District Judge**