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

CHARZEL P. SHEARS,  
Petitioner,  
v.  
M.E. SPEARMAN, Warden,  
Respondent.

Case No.: 17cv0559 MMA (BLM)

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

[Doc. No. 18]

**DENYING PETITION FOR WRIT  
OF HABEAS CORPUS;**

[Doc. No. 1]

**DENYING REQUEST FOR  
EVIDENTIARY HEARING;**

[Doc. No. 17]

**DECLINING TO ISSUE  
CERTIFICATE OF  
APPEALABILITY**

Petitioner Charzel Shears (“Petitioner”), a state prisoner proceeding *pro se*, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for first degree murder and two counts of premeditated attempted murder. *See* Doc. No. 1. Respondent filed an answer to the petition. *See* Doc. No. 13. Petitioner

1 filed a traverse. *See* Doc. No. 17. The matter was referred to United States Magistrate  
2 Judge Barbara L. Major for preparation of a Report and Recommendation pursuant to  
3 Title 28, section 636(b)(1), and Civil Local Rule HC.2. Judge Major has issued a  
4 thorough and well-reasoned Report recommending that the petition be denied. *See* Doc.  
5 No. 18.

6 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. §  
7 636(b)(1), the Court must “make a de novo determination of those portions of the report .  
8 . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part,  
9 the findings or recommendations made by the magistrate [judge].” 28 U.S.C. §  
10 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).  
11 Objections to the Report and Recommendation were due no later than February 23, 2018.  
12 To date, no objections have been filed.<sup>1</sup>

13 Accordingly, the Court finds that Judge Major has issued an accurate Report and  
14 well-reasoned recommendation that the petition be denied. The Court **ADOPTS** the  
15 Report and Recommendation in its entirety. The Court **DENIES** the petition with  
16 prejudice and **DENIES** Petitioner’s request for an evidentiary hearing.

#### 17 CERTIFICATE OF APPEALABILITY

18 Rule 11 of the Federal Rules Governing Section 2254 Cases states that “the  
19 district court must issue or deny a certificate of appealability when it enters a final order  
20 adverse to the applicant.” A certificate of appealability is not issued unless there is “a  
21 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).  
22 Under this standard, a petitioner must show that reasonable jurists could debate whether  
23 the petition should have been resolved in a different manner or that the issues presented  
24 were adequate to deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537  
25 U.S. 322, 336 (2003), quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For the  
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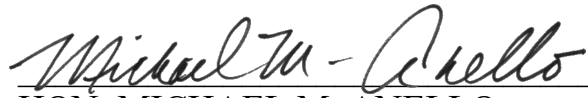
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28 <sup>1</sup> The Clerk of Court served Petitioner with a copy of the Report and Recommendation via U.S.  
Mail on January 26, 2018. *See* Doc. No. 18.

1 reasons set forth in the Report and Recommendation and incorporated by reference  
2 herein, the Court finds that this standard has not been met and therefore **DECLINES** to  
3 issue a certificate of appealability in this case.

4 The Clerk of Court is instructed to enter judgment accordingly and close the case.

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6 **IT IS SO ORDERED.**

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8 DATED: March 6, 2018

  
HON. MICHAEL M. ANELLO  
United States District Judge

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