

1
2
3
4
5
6
7
8
9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 MICHAEL E. MAAS,

14 Petitioner,

15 v.

16
17 RONALD RACKLEY,

18 Respondent.
19
20

Case No. 3:17-cv-1547-BAS(JMA)

ORDER:

**(1) APPROVING AND ADOPTING
REPORT AND
RECOMMENDATION IN ITS
ENTIRETY (ECF No. 13); AND**

**(2) GRANTING MOTION TO
DISMISS (ECF No. 8)**

21 Petitioner Michael E. Maas, a state prisoner, proceeding pro se, has filed a Petition
22 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging his 1998 convictions
23 in San Diego Superior Court Case Nos. SCE185960 and SCE188460 for grand theft,
24 unlawful taking of a vehicle, burglary and forgery. (ECF No. 1.) Petitioner initially filed
25 this action pursuant to 28 U.S.C. § 2241, but he is a state prisoner attacking the validity of
26 a California State court conviction and sentence and cannot proceed under section 2241.
27 Instead, the Court construed this action as one brought pursuant to 28 U.S.C. § 2254. (*See*
28 ECF No. 3). *See White v. Lambert*, 370 F.3d 1002, 1006-07 (9th Cir. 2004) (holding that

1 section 2254 is the proper jurisdictional basis for a habeas petition brought by an individual
2 “in custody pursuant to a state court judgment”).

3 On November 28, 2017, Respondent Ronald Rackley filed a motion to dismiss.
4 (ECF No. 8.) On June 19, 2018, Magistrate Judge Jan M. Adler considered this motion
5 and issued a Report & Recommendation (“R&R”). (ECF No. 13.) Judge Adler
6 recommends that this Court grant the motion to dismiss. (*Id.*) The magistrate judge ordered
7 that any objections to the R&R be filed no later than July 6, 2018, and that any replies to
8 the objections be filed no later than July 20, 2018. (R&R at 9.) To date, Petitioner has not
9 filed any objections or requests for additional time to do so.

10 The Court reviews *de novo* those portions of the R&R to which objections are made.
11 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or in part, the
12 findings or recommendations made by the magistrate judge.” *Id.* But “[t]he statute makes
13 it clear that the district judge must review the magistrate judge’s findings and
14 recommendations *de novo if objection is made*, but not otherwise.” *United States v. Reyna-*
15 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also Schmidt v. Johnstone*, 263
16 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (concluding that where no objections were filed,
17 the district court had no obligation to review the magistrate judge’s report). “Neither the
18 Constitution nor the statute requires a district judge to review, *de novo*, findings and
19 recommendations that the parties themselves accept as correct.” *Id.* “When no objections
20 are filed, the *de novo* review is waived.” *Marshall v. Astrue*, No. 08-cv-1735, 2010 WL
21 841252, at *1 (S.D. Cal. Mar. 10, 2010) (Lorenz, J.) (adopting report in its entirety without
22 review because neither party filed objections to the report despite the opportunity to do
23 so).


24 In this case, the deadline for filing objections was July 6, 2018. However, Petitioner
25 has not filed any objections or requests for additional time to do so. Consequently, the
26 Court may adopt the R&R on that basis alone. *See Reyna-Tapia*, 328 F.3d at 1121. Having
27 nonetheless reviewed the R&R, the Court agrees with the R&R’s recommendations.
28 Additionally, though Magistrate Judge Adler did not state whether to grant Respondent’s

1 request to dismiss with or without leave to amend, the Court finds that granting the request
2 without leave to amend is appropriate. Magistrate Judge Adler recommended granting the
3 motion to dismiss based on three incurable deficiencies: (1) the petition was successive;¹
4 (2) certain claims were barred by *Lackawanna County District Attorney v. Coss*, 532 U.S.
5 394 (2001); and (2) the petition was untimely. (R&R at 5-7.) Considering these grounds
6 for dismissal, granting Petitioner leave to amend would be futile.

7 Accordingly, the Court hereby approves and **ADOPTS** the R&R in its entirety (ECF
8 No. 13). The Court therefore **GRANTS WITHOUT LEAVE TO AMEND** Respondent's
9 motion to dismiss. (ECF No. 8.)

10 **IT IS SO ORDERED.**

11
12 **DATED: July 19, 2018**

13 
14 **Hon. Cynthia Bashant**
15 **United States District Judge**

16
17
18
19
20
21
22
23
24
25
26 ¹ Magistrate Judge Adler found that the Court is barred from considering a
27 successive petition, absent an order from the Ninth Circuit authorizing the Court to
28 consider a successive petition. (R&R at 5.) Judge Adler also found that "there is no
indication that the Ninth Circuit Court of Appeals has granted Petitioner leave to file a
successive petition." (*Id.*)