

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

RICHARD W. SALMON,
Petitioner,

Case No. 2:16-cv-01841-TC
OPINION AND ORDER

vs.

MARK NOOTH,
Respondent.

AIKEN, Judge:

On June 14, 2018, Magistrate Judge Coffin filed his Findings and Recommendation (“F&R”), recommending that I deny petitioner Irvin Moreno’s § 2254 petition for a writ of habeas corpus. The matter is now before me pursuant to 28 U.S.C § 636 and Federal Rule of Civil Procedure 72. I review *de novo* those portions of the F&R to which plaintiff filed objections. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); *Holder v. Holder*, 392 F.3d 1009, 1022 (9th Cir. 2004).

I find no error in Judge Coffin’s reasoning. Petitioner contends that Judge Coffin did not address his argument that the Oregon Court of Appeals violated his right to procedural due process when it denied his request to file a supplemental brief after he had already filed his opening brief. That denial is an improper ground for habeas relief because petitioner cannot

show prejudice. *Calderon v. Coleman*, 525 U.S. 141, 147 (1998). Judge Coffin did not recommend dismissal on the grounds of procedural default; instead, he reached the merits of each of petitioner's arguments. As a result, petitioner suffered no prejudice from the Oregon Court of Appeals' refusal to accept his supplemental brief.

I ADOPT Judge Coffin's F&R (doc. 41). Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (doc. 2) is DENIED. I decline to issue a Certificate of Appealability because petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated this 9th day of August 2018.



Ann Aiken
United States District Judge