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

RANDALL RAY MARTINO,

Case No. 6:17-cv-00925-MK

ORDER

Petitioner,

vs.

CHRISTINE POPOFF, Superintendent, Oregon State Correctional Institution,

Respondent.

AIKEN, District Judge:

Magistrate Judge Mustafa Kasubhai filed his Findings and Recommendations ("F&R") (doc. 54) recommending that petitioner's Petition for Writ of Habeas Corpus (doc. 2) be dismissed with prejudice. This case is now before me. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge's F&R, the district court must make a *de novo* determination of that portion of the magistrate judge's report. See 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore

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Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert denied, 455 U.S.

920 (1982). Petitioner has filed timely objections. (doc. 56) Thus, I review the F&R

de novo.

Having considered the record and the arguments offered by petitioner, the

Court finds no error in Magistrate Judge Kasubhai's analysis. Therefore, the Court

adopts the F&R (doc. 54) in part. Thus, the Petition for Writ of Habeas Corpus

(doc. 2) is DISMISSED, with prejudice.

However, in considering petitioner's objections, the Court grants the

request for a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322,

327 (2003). (If a court denies a habeas petition, the court may issue a certificate of

appealability if "jurists of reason could disagree with the district court's

resolution of [the petitioner's] constitutional claims or that jurists could conclude

the issues presented are adequate to deserve encouragement to proceed further.")

IT IS SO ORDERED.

Dated this <u>27th</u> day of May, 2020.

/s/Ann Aiken

Ann Aiken

United States District Judge

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