

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

James Carl Kelly v. Governor Gavin Newsom, et al.

Kelly v. Newsom · No. 1:25-cv-0204 JLT SKO (HC) · Decided April 29, 2025

OPINION

(HC) Kelly v. Newsom

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 JAMES CARL KELLY, Case No. 1:25-cv-0204 JLT SKO (HC) 12 Petitioner, ORDER
ADOPTING FINDINGS AND

RECOMMENDATIONS, DISMISSING

13 v. PETITION FOR WRIT OF HABEAS

CORPUS, DIRECTING CLERK OF COURT

14 TO MAIL PETITIONER A BLANK CIVIL

GOVERNOR GAVIN NEWSOM, et al., RIGHTS FORMS, AND DIRECTING CLERK

15 OF COURT TO ENTER JUDGMENT AND

Respondents. CLOSE CASE 16 (Doc. 6) 17

ORDER DECLINING TO ISSUE

18 CERTIFICATE OF APPEALABILITY

19 James Carl Kelly is a state prisoner proceeding pro se and in forma pauperis with a 20 petition
for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The magistrate judge performed 21 a
preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 22
Cases, and found Petitioner “complains that his reasonable accommodation requests for law 23
library use were wrongfully denied.” (Doc. 6 at 2.) The magistrate judge found that “Petitioner 24
does not challenge his conviction,” and his “civil rights claims are not cognizable in a federal 25
habeas action.” (Id.) The magistrate judge determined “Petitioner must seek relief for his 26
complaints by way of a civil rights action.” (Id.) The magistrate judge recommended the Court 27
dismiss the petition and provide Petitioner with a civil rights complaint form. (Id. at 3.) 28 The
Court served the Findings and Recommendations on Petitioner and notified him that 1 any
objections were due within 21 days. (Doc. 6.) The Court advised him that the “failure to file 2
objections within the specified time may result in the waiver of rights on appeal.” (Id. at 3, citing
3 Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014).) Petitioner requested an extension
of 4 time, and the magistrate judge granted an additional 30 days to and including April 13, 2025,

to 5 file objections. (Docs. 9, 10.) Petitioner did not file objections, and the time to do so has passed. 6 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a de novo review of this 7 case. Having carefully reviewed the matter, the Court concludes the Findings and 8 Recommendations are supported by the record and proper analysis. 9 In addition, the Court declines to issue a certificate of appealability. A state prisoner 10 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of 11 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 12 U.S. 322, 335-336 (2003). If the Court denies a petition, it may only issue a certificate of 13 appealability when a petitioner makes a substantial showing of the denial of a constitutional right. 14 28 U.S.C. § 2253(c)(2). To make a substantial showing, Petitioner must establish that 15 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have 16 been resolved in a different manner or that the issues presented were 'adequate to deserve 17 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting 18 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). In the present case, the Court finds Petitioner did 19 not make the required substantial showing of the denial of a constitutional right to justify the 20 issuance of a certificate of appealability. Reasonable jurists would not find the determination that 21 Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of 22 encouragement to proceed further. Thus, the Court ORDERS: 23 1. The Findings and Recommendations issued on February 20, 2025 (Doc. 6) are 24 ADOPTED in full. 25 2. The petition for writ of habeas corpus is DISMISSED with prejudice. 26 3. The Clerk of Court is directed to mail Petitioner blank forms for filing a § 1983 27 civil rights action. 28 4. The Clerk of Court is directed to enter judgment and close the case. 1 5. The Court declines to issue a certificate of appealability. 2 This order terminates the action in its entirety. 3 4 IT IS SO ORDERED. 5 Dated: _ April 29, 2025 Cerin | Tower

TED STATES DISTRICT JUDGE

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