FILED

SEP 13 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHARIF A. ELTAWIL, Petitioner - Appellant, v. DAVID PHILLIPS, Warden, Respondent - Appellee.	No. 23-1676 D.C. No. 8:23-cv-00489-FWS-PVC Central District of California, Santa Ana ORDER

Before: CALLAHAN and M. SMITH, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHARIF AZMI ELTAWIL, Petitioner, v. BRYAN D. PHILLIPS, ACTING WARDEN, Respondent.	Case No. 8:23-cv-00489-FWS-PVC **ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE [11] AND DENYING PETITION FOR HABEAS CORPUS [1]**

7

7

2

I. Introduction and Relevant Procedural History

Before the Court is the Magistrate Judge's Report and Recommendation issued on May 25, 2023 (the "Report and Recommendation"), (Dkt. 11), regarding the Petition for Habeas Corpus (the "Petition"), (Dkt. 1), filed by Petitioner Sharif Azmi Eltawil ("Petitioner"). Based on the state of the record, as applied to the applicable law, the court adopts the Report and Recommendation issued by the Magistrate Judge, including each of the findings of fact and conclusions of law therein.

On March 16, 2023, Petitioner filed the Petition. (Dkt. 1.) On May 25, 2023, the Magistrate Judge issued the Report and Recommendation. (Dkt 11.) On or about June 14, 2023, Plaintiff filed a "Motion Objecting to [the] Magistrate['']s Report and Recommendation" (the "Objections"). (Dkt. 12).

II. Analysis

"A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3) (stating "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to," and "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions"). Proper objections require "specific written objections to the proposed findings and recommendations" of the magistrate judge. Fed. R. Civ. P. 72(b)(2). "A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) ("The statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise."). Where no objection has been made, arguments challenging a finding are deemed waived. *See* 28 U.S.C. § 636(b)(1)(C) ("Within fourteen days after being served with a copy, any party may serve and file

8

written objections to such proposed findings and recommendations as provided by rules of court."). Moreover, "[o]bjections to a R&R are not a vehicle to relitigate the same arguments carefully considered and rejected by the Magistrate Judge." *Chith v. Haynes*, 2021 WL 4744596, at *1 (W.D. Wash. Oct. 12, 2021).

In the Report and Recommendation, the Magistrate Judge recommends the "Court issue an Order: (1) accepting and adopting this Report and Recommendation, (2) denying the Petition for Habeas Corpus, and (3) directing that Judgment be entered dismissing this action without prejudice as untimely." (Dkt. 11 at 10.) In the Objections, Plaintiff makes several assertions, including that "Equitable Tolling should be given affect due to the 'extraordinary circumstances' beyond the prisoner's control." (Dkt. 12 at 1.)

In this case, after conducting a *de novo* review of the Objections, the court agrees with each of the findings of fact and conclusions of law set forth in the Report and Recommendation, including the recommendation that "the AEDPA limitation period expired on December 5, 2007, and Petitioner's federal habeas petition is untimely." (Dkt. 11 at 9.) Accordingly, the Objections are **OVERRULED** on their merits.

In sum, pursuant to 28 U.S.C. § 636, the Court has reviewed the record, including the Report and Recommendation, the Petition, the Objections, and the other files and records of the case. After conducting a *de novo* determination of the portions of the Report and Recommendation to which the Objections pertain, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge in the Report and Recommendation.

III. Conclusion

Based on the state of the record, as applied to the applicable law, the Court adopts the Report and Recommendation, including each of the findings of fact and conclusions of law therein. Accordingly, the Court orders the following:

(1) The Petition is denied.

(2) Judgment is entered dismissing this action without prejudice as untimely.

(3) The Clerk is directed to serve copies of this Order and the Judgment herein on Petitioner at his current address of record.

IT IS SO ORDERED.

Dated: July 10, 2023

Hon. Fred W. Slaughter
UNITED STATES DISTRICT JUDGE

10

10

5

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov Message-Id:<36166660@cacd.uscourts.gov>Subject:Activity in Case 8:23-cv-00489-FWS-PVC Sharif A. Eltawil v. David Phillips Judgment Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing
The following transaction was entered on 7/11/2023 at 3:20 PM PDT and filed on 7/10/2023

Case Name: Sharif A. Eltawil v. David Phillips

Case Number: 8:23-cv-00489-FWS-PVC

Filer:

WARNING: CASE CLOSED on 07/10/2023

Document Number: 15

Docket Text:
JUDGMENT by Judge Fred W. Slaughter, Related to: R&R - Accepting Report and Recommendations [14]. IT IS HEREBY ADJUDGED that the above-captioned action is dismissed without prejudice. (MD JS-6, Case Terminated).(hr)

11

8:23-cv-00489-FWS-PVC Notice has been electronically mailed to:
8:23-cv-00489-FWS-PVC Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :
Sharif A. Eltawil
CDC V-41564
P.O. Box 5248
Corcoran CA 93212

11

6

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov Message-Id:<36166689@cacd.uscourts.gov>Subject:Activity in Case 8:23-cv-00489-FWS-PVC Sharif A. Eltawil v. David Phillips Order on Petition for Certificate of Appealability Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing
The following transaction was entered on 7/11/2023 at 3:22 PM PDT and filed on 7/10/2023

Case Name: Sharif A. Eltawil v. David Phillips

Case Number: 8:23-cv-00489-FWS-PVC

Filer:

WARNING: CASE CLOSED on 07/10/2023

Document Number: 16

12

Docket Text:
ORDER DENYING CERTIFICATE OF APPEALABILITY by Judge Fred W. Slaughter re Petition for Writ of Habeas Corpus (2254)[1]. (see document for details) (hr)

8:23-cv-00489-FWS-PVC Notice has been electronically mailed to:
8:23-cv-00489-FWS-PVC Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :
Sharif A. Eltawil
CDC V-41564
P.O. Box 5248
Corcoran CA 93212

3

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHARIF AZMI ELTAWIL, Petitioner, v. BRYAN D. PHILLIPS, Acting Warden, Respondent.	Case No. 8:23-cv-00489-FWS-PVC **ORDER DENYING CERTIFICATE OF APPEALABILITY**

13

By separate Order and Judgment filed concurrently herewith, the Court has determined that habeas relief should be denied and this action should be dismissed without prejudice. Under 28 U.S.C. § 2253(c)(1)(A), an appeal may not be taken from "the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court" unless the appellant first obtains a certificate of appealability ("COA"). Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, this Court must therefore "issue or deny a certificate of appealability when it enters a final order adverse to the applicant."

Section 2253(c)(2) provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has made clear that Section 2253(c)(2) does not bar appellate review

Additional material from this filing is available in the Clerk's Office.