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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gregory A. Gibson,)	
)	
Petitioner,)	No. CV-07-1217-PHX-PGR (ECV)
vs.)	
)	
L. Blair, et al.,)	<u>ORDER</u>
)	
Respondents.)	
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Having reviewed *de novo* Magistrate Judge Voss' Report and Recommendation in light of the petitioner's Objections to Magistrate's Report and Recommendation (doc. #18), the Court finds that the petitioner's objections should be overruled as being without legal merit.

First, the Court concludes that the Magistrate Judge correctly determined that the petitioner procedurally defaulted on Grounds Two and Three of his habeas petition inasmuch as a review of the record establishes that the petitioner failed to fairly present either of these claims to the Arizona Court of Appeals and that he failed to fairly present Ground Three to the Arizona Supreme Court. The Court also concludes that the petitioner has not, either through his petition or through his Objections, sufficiently demonstrated either cause and prejudice or a fundamental miscarriage of justice.

1 Second, as to Ground One, the Court further concludes that the Magistrate
2 Judge correctly determined that the petitioner's enhanced sentence was not
3 imposed in violation of Blakely v. Washington, 542 U.S. 296 (2004), as argued by
4 the petitioner. The Court rejects the petitioner's argument in his Objections that
5 the legal justification for his enhanced sentence, the Arizona Supreme Court's
6 decision in State v. Martinez, 115 P.3d 618 (Ariz.), *cert. denied*, 546 U.S. 1044
7 (2005), was wrongly decided. The Martinez court's holding that only a single
8 aggravating factor need be found by the jury to enable the sentencing judge to
9 consider other aggravating factors not determined by the jury in order to select a
10 sentence within the new maximum sentencing range made possible by the jury's
11 finding is not contrary to, nor an unreasonable application of, clearly established
12 federal law as determined by the United States Supreme Court in Blakely.

13 Therefore,

14 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
15 (doc. #16) is accepted and adopted by the Court.

16 IT IS FURTHER ORDERED that the petitioner's Petition for Writ of Habeas
17 Corpus by a Person in State Custody Pursuant to 28 U.S.C. § 2254 is denied and
18 that this action is dismissed with prejudice. The Court of the Court shall enter
19 judgment accordingly.

20 DATED this 18th day of December, 2008.

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23 
24 Paul G. Rosenblatt
United States District Judge