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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jeff M. Welch,)	No. CV 07-2169 PHX-NVW (CRP)
)	
Petitioner,)	ORDER
)	
v.)	
)	
Dora B. Schriro, et al.,)	
)	
Respondents.)	
_____)	

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Pyle (Doc. # 10) regarding petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. # 1). The R&R recommends that the Petition be denied. The Magistrate Judge advised the parties that they had ten days to file objections to the R&R. (R&R at 10 (citing 28 U.S.C. § 636(b)). The time to file an objection to the R&R expired on November 30, 2009, and no party has filed an objection.

Because the parties did not file objections, the Court need not review any of the Magistrate Judge’s determinations on dispositive matters. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not . . . require any review at all . . . of any issue that is not the subject of an objection.”).

In his Ground I Petitioner argues that his conviction is unconstitutional because A.R.S. § 13-3553(a) is unconstitutionally overbroad. As to Ground I, the Court agrees

1 with the Magistrate Judge's determinations, accepts the recommended decision within the
2 meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner's objections. *See* 28
3 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole
4 or in part, the findings or recommendations made by the magistrate”).

5 In his Ground II, Petitioner contends that his sentence to 170 years imprisonment
6 for possession of ten images of child pornography in violation of A.R.S. § 13-3553(a)
7 constitutes cruel and unusual punishment in violation of the Fourteenth and Eighth
8 Amendments of the United States Constitution. Respondents did not respond to this
9 contention, arguing that Petitioner did not adequately present this federal issue in his Rule
10 32 post-conviction proceedings in the Arizona Superior Court. The R&R recommends
11 finding that the Rule 32 proceedings did adequately present this federal issue but
12 recommends rejection of the cruel and unusual punishment claim on its merits.

13 The recommendation that Ground II be rejected on the merits is without benefit of
14 briefing from Respondents or focused discussion of the particular facts and circumstances
15 of Petitioner’s case. Such circumstances might bear upon the cruel and unusual
16 punishment claim, and they would likely be necessary to an adequate appellate review of
17 Ground II. The Court will therefore call for briefing on Petitioner’s Ground II, including:

18 The nature and circumstances of Petitioner’s offenses of conviction in this case.

19 The nature, circumstances, and times of Petitioner’s prior convictions for child
20 molestation, the sentences for them, and the relative wrongfulness of those
21 offenses and these ones.

22 Where the Arizona minimum and maximum sentences stand in relation to the
23 minimum and maximum sentences for the same offense in other jurisdictions.

24 Any other facts or matters pertinent to the Fourteenth and Eighth Amendment
25 cruel and unusual punishment claim.

26 How the facts and circumstances of Petitioner’s case should be assessed under the
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1 standard of scrutiny for federal habeas proceedings under 28 U.S.C. § 2254(d).

2 IT IS THEREFORE ORDERED that the Report and Recommendation of the
3 Magistrate Judge (Doc. # 10) is accepted as to Petitioner's Ground I.

4 IT IS FURTHER ORDERED that the Report and Recommendation of the
5 Magistrate Judge (Doc. # 10) is rejected as to Ground II, without prejudice to filing the
6 same or a different Report and Recommendation after the briefing required by this order.
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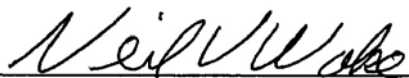
8 IT IS FURTHER ORDERED that Petitioner's Ground II is remanded to the
9 Magistrate Judge for preparation of a further Report and Recommendation. The
10 Magistrate Judge is requested to file a further the Report and Recommendation
11 concerning Ground II by April 30, 2010, if possible, as this Court must conclude all
12 proceedings and enter final judgment in this case by November 7, 2010, to comply with
13 the Civil Justice Reform Act.

14 IT IS FURTHER ORDERED that Respondents file by January 29, 2010, a brief
15 addressing the questions posed in this order. Petitioner may file a reply by February 26,
16 2010. These deadlines are subject to amendment by order of the Magistrate Judge.

17 No judgment shall be entered at this time, and this order is not final or appealable.

18 DATED this 14th day of December, 2009.
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Neil V. Wake
United States District Judge