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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Jerome Mason, )  
10 Petitioner, )  
11 v. )  
12 Dora B. Schriro, et al., )  
13 Respondents. )  
14 \_\_\_\_\_ )

CV 08-1970-PHX-PGR (JRI)

**ORDER**

**NON-DEATH PENALTY**

15 Currently before the Court is the Report and Recommendation of Magistrate Judge  
16 Irwin (Doc. 13) based on Petitioner’s Petition for Writ of Habeas Corpus filed pursuant to  
17 28 U.S.C. § 2254.<sup>1</sup> Having reviewed *de novo* the Petition, the Report and Recommendation  
18 of Magistrate Judge Irwin, and the Petitioner’s objections thereto,

19 IT IS HEREBY ORDERED that the Magistrate Judge’s Report and Recommendation  
20 (**Doc. 13**) is **ACCEPTED** and **ADOPTED** by the Court.

21 IT IS FURTHER ORDERED that the portion of Ground One based on trial counsel’s  
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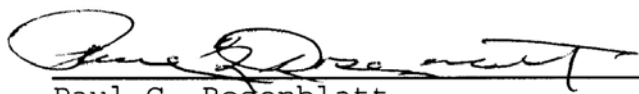
23 <sup>1</sup> Petitioner challenges his state court conviction of first degree murder, burglary in  
24 the first degree, and endangerment. (Doc. 1.) On February 27, 1998, Petitioner engaged in  
25 a verbal argument with the victim at a motel in Phoenix, Arizona. The victim retired to his  
26 motel room with a woman. Petitioner followed the victim, kicked down the door fired a  
27 number of shots at the victim, killing him. Petitioner was arrested in 2001 in Milford,  
28 Connecticut. Petitioner proceeded to a jury trial in April, 2002, and was convicted of first  
degree murder, burglary in the first degree, and endangerment. Petitioner was sentenced to  
concurrent sentences of: (a) life without possibility of parole for 25 years, (b) 10.5 years, and  
(c) 2.25 years.

1 failure to submit an affidavit by Petitioner's passenger and all of Ground Three (actual  
2 innocence) of the Petitioner's Petition for Writ of Habeas Corpus is **DENIED**.<sup>2</sup>

3 IT IS FURTHER ORDERED that the remainder of Petitioner's Petition for Writ of  
4 Habeas Corpus (**Doc. 1**) is **DISMISSED with prejudice**.

5 IT IS FURTHER ORDERED that the Clerk of the Court shall close this case.

6 DATED this 8<sup>th</sup> day of February, 2010.

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9 Paul G. Rosenblatt  
United States District Judge

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24 <sup>2</sup> This Court agrees with Magistrate Judge Irwin's finding that the portion of Ground  
25 One based on trial counsel's failure to submit an affidavit by Petitioner's passenger and all  
26 of Ground Three (actual innocence) are *without merit* for the reason set forth in the Report  
27 and Recommendation. The remainder of Petitioner's grounds for relief are unexhausted or  
28 procedurally defaulted and Petitioner has failed to show cause and prejudice or actual  
innocence to excuse that default. Accordingly, denial with prejudice is warranted.