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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

George Schultz, III,

Petitioner,

vs.

Charles L. Ryan, et al.

Respondents.

) No. CV09-2537-PHX-SRB

) **ORDER**

_____)
Petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on December 4, 2009 asserting two grounds for relief. First, Petitioner claims his Sixth Amendment rights were violated because the judge rather than the jury determined facts used to increase his sentence. Second, Petitioner claims his Fourteen Amendments rights were violated because the state statutes used to sentence Petitioner were unconstitutionally vague. On February 8, 2010, Respondents filed their answer to Petitioner's Petition for Writ of Habeas Corpus. Petitioner filed his reply on March 19, 2010. On February 8, 2011, the Magistrate Judge issued his Report and Recommendation recommending that Ground One of Petitioner's Petition for Writ of Habeas Corpus be denied and Ground Two be dismissed with prejudice..

In his Report and Recommendation the Magistrate Judge advised the parties that they had 14 days from the date of service of a copy of the Report and Recommendation within

1 which to file specific written objections with the Court. The time to file such objections has
2 expired and no objections to the Report and Recommendation have been filed.

3 The Court has reviewed the habeas filings and finds itself in agreement with the
4 Report and Recommendation of the Magistrate Judge.

5 IT IS ORDERED adopting the Report and Recommendation of the Magistrate Judge
6 as the order of this Court.

7 IT IS FURTHER ORDERED that Ground One, the Sixth Amendment claim, of the
8 Petition for Writ of Habeas Corpus is denied.

9 IT IS FURTHER ORDERED that Ground Two, the Fourteenth Amendment claim,
10 of the Petition for Writ of Habeas Corpus is dismissed with prejudice.

11 IT IS FURTHER ORDERED denying any Certificate of Appealability and leave to
12 proceed *in forma pauperis* on appeal. The dismissal of the Petition is justified by a plain
13 procedural bar and jurists of reason would not find the procedural ruling debatable and
14 because Petitioner has not made a substantial showing of the denial of a constitutional right.

15 IT IS FURTHER ORDERED directing the Clerk to enter judgment accordingly.
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17 DATED this 15th day of March, 2011.
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22 Susan R. Bolton
23 United States District Judge
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