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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Andrija James Balas,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

No. CV-10-0101-PHX-PGR (LOA)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Anderson in light of the petitioner’s Petition for Re-Consideration on Ruling by Magistrate (Doc. 23), which the Court construes as the petitioner’s objections to the Report and Recommendation, the Court finds that the Magistrate Judge correctly determined that the petitioner’s timely petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, should be dismissed.

The gist of the petitioner’s first claim in his Amended Petition (Doc. 10) is that his Fifth Amendment right against self-incrimination was violated when he was forced to appear before the jury in jail clothes and shackles.<sup>1</sup> The Court

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<sup>1</sup>

While the Report and Recommendation does not expressly refer to the Amended Petition, it is clear that the Report and Recommendation is directed at

1 agrees with the Magistrate Judge that this claim is procedurally barred from  
2 federal habeas corpus review because the Arizona Court of Appeals rejected the  
3 claim on the basis of the “invited error” doctrine, which is an adequate and  
4 independent state procedural rule<sup>2</sup>, and because the petitioner has failed to  
5 assert any legitimate cause for the procedural bar or to show that the failure to  
6 consider his Fifth Amendment claim will result in a fundamental miscarriage of  
7 justice.<sup>3</sup>

8 The gist of the petitioner’s second claim is that his Fourteenth Amendment  
9 right to due process, which the Court construes as a Sixth Amendment claim of  
10 ineffective assistance of counsel, was violated due to his counsel’s failure to  
11 object to the petitioner’s appearance at trial in prison clothes and restraints. The  
12 Court agrees with the Magistrate Judge that this claim should be denied on its  
13 merits because the petitioner has failed to establish that the state superior court’s  
14 rejection of this claim was either contrary to, or an unreasonable application of,  
15 clearly established federal law as set forth by the Supreme Court in Strickland v.  
16 Washington, 466 U.S. 668 (1984), or resulted in a decision that was based on an

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17 the claims raised in the Amended Petition.

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19 The Arizona Court of Appeals concluded that the petitioner had either  
20 invited or waived any error regarding his in-custody appearance because he  
21 made the decision to appear before the jury in jail clothes and restraints by  
choosing not to change into street clothes.

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23 The Court agrees that this claim also fails on its merits because the  
24 petitioner cannot establish any actual prejudice from the jury viewing him in  
25 prison clothing and restraints inasmuch as the State presented overwhelming  
26 evidence of his guilt. See Cox v. Ayers, 613 F.3d 883, 891 (9<sup>th</sup> Cir.2010) (Court  
concluded in a habeas proceeding that the unconstitutional shackling of a  
defendant does not have any prejudicial effect on a guilty verdict if the evidence  
of guilt is overwhelming.)

1 unreasonable determination of the facts in light of the state court record. At the  
2 very least, the petitioner has not established that he was prejudiced by any failure  
3 by his counsel to object to his appearance in prison clothing and restraints given  
4 the overwhelming evidence of his guilt. See Allen v. Woodward, 395 F.3d 979,  
5 999 (9<sup>th</sup> Cir.2005) (Court concluded that even if the petitioner's counsel's  
6 performance was arguably deficient, the petitioner could not establish the  
7 prejudice required to satisfy Strickland's prejudice prong due to the overwhelming  
8 evidence of the petitioner's guilt); Whitman v. Bartow, 434 F.3d 968, 972 (7<sup>th</sup> Cir.  
9 2006) ("Because [the petitioner's] appearance before the jury in his prison  
10 clothing did not prejudice the outcome of his trial, [the petitioner's] ineffective  
11 assistance of counsel claim also fails. ... The evidence of [the petitioner's] guilt  
12 was overwhelming, and his attire was not an outcome determinative factor in the  
13 jury's decision.") Therefore,

14 IT IS ORDERED that the Magistrate Judge's Report and Recommendation  
15 (Doc. 20) is accepted and adopted by the Court.

16 IT IS FURTHER ORDERED that the petitioner's [Amended] Petition Under  
17 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody  
18 (Doc. 10) is denied and that this action is dismissed with prejudice.

19 IT IS FURTHER ORDERED that no Certificate of Appealability shall issue  
20 and that the petitioner is not authorized to appeal *in forma pauperis* because the  
21 dismissal of the petitioner's habeas petition is justified by a plain procedural bar  
22 and jurists of reason would not find the procedural ruling debatable, and because  
23 the petitioner has not made a substantial showing of the denial of a constitutional  
24 right.

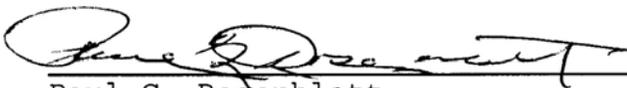
25 IT IS FURTHER ORDERED that the Clerk of the Court shall enter  
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1 judgment accordingly.

2 DATED this 2<sup>nd</sup> day of August, 2011.

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Paul G. Rosenblatt  
United States District Judge

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