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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Fredi Flores-Zevada,

Petitioner,

vs.

Charles Ryan, et al.

Respondents.

) No. CV10-0933-PHX-SRB

) **ORDER**

\_\_\_\_\_ )  
Petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on April 28, 2010 raising three ground for relief:

1. Petitioner’s rights pursuant to the Fifth, Sixth, and Fourteenth Amendments were violated when the trial court, instead of a jury, found aggravating factors justifying a sentence in excess of the statutory maximum, because his sentence was based upon false and unsubstantiated information, and because no notice was given of the aggravating factors found by the court at sentencing;

2. Petitioner received ineffective assistance of trial and appellate counsel because counsel failed to raise in the trial or appellate court the issues noted in Petitioner’s first ground for relief, his trial attorney failed to request a lesser-included instruction on the felony-murder charge, and his trial attorney failed to present evidence to prove Petitioner had no foreknowledge of his co-defendant’s intent to shoot the victim.

3. Petitioner’s rights pursuant to the Fifth, Sixth, and Fourteenth Amendments were violated because Petitioner lacked the knowledge that his co-defendant would shoot the

1 victim and he is therefore actually innocent, the trial court at sentencing relied upon perjured  
2 testimony, and the trial court improperly aggravated his sentence by relying upon uncharged  
3 criminal activity. On June 25, 2010, Respondents filed their Response to Petitioner's Petition  
4 for Writ of Habeas Corpus. No reply was filed but Petitioner filed several subsequent  
5 pleadings addressing the statute of limitations and procedural default issued raised in the  
6 response to his Petition for Writ of Habeas Corpus. On March 2, 2011, the Magistrate Judge  
7 issued her Report and Recommendation recommending that the petition be denied as  
8 untimely and dismissed with prejudice.

9 In her Report and Recommendation the Magistrate Judge advised the parties that they  
10 had 14 days from the date of service of a copy of the Report and Recommendation within  
11 which to file specific written objections with the Court. The time to file such objections has  
12 expired and no objections to the Report and Recommendation have been filed.

13 The Court finds itself in agreement with the Report and Recommendation of the  
14 Magistrate Judge.

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

17 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is denied  
18 as untimely and dismissed with prejudice.

19 IT IS FURTHER ORDERED denying any Certificate of Appealability and leave to  
20 proceed *in forma pauperis* on appeal because the denial of the Petition is justified by a plain  
21 procedural bar and jurists of reason would not find the procedural bar debatable.

22 IT IS FURTHER ORDERED directing the Clerk to enter judgment accordingly.  
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24 DATED this 25<sup>th</sup> day of March, 2011.

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28 Susan R. Bolton  
United States District Judge