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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

William Franklin Najar,

Petitioner,

vs.

Charles L. Ryan, Terry Goddard,

Respondents.

) No. CV10-1981-PHX-SRB

) **ORDER**

Petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on September 15, 2010 raising seven grounds for relief:

(1) Petitioner alleges he was denied a jury finding of aggravating factors at his 2005 re-sentencing, in violation of the Supreme Court’s decision in Blakely v. Washington, 542 U.S. 296 (2004).

(2) Petitioner alleges he was denied his constitutional right to have the aggravating factors proved beyond a reasonable doubt at his 2005 re-sentencing.

(3) Petitioner alleges he was illegally re-sentenced to a term greater than that authorized by the finding of guilt and absent jury findings of aggravating factors.

(4) Petitioner alleges he was denied the effective assistance of counsel at his 2005 re-sentencing because counsel failed to protect his right to a jury finding of the aggravating factors beyond a reasonable doubt.

1 (5) Petitioner alleges he was denied the effective assistance of trial counsel  
2 because counsel failed to seek a determination of Petitioner's competence to be tried.

3 (6) Petitioner alleges he was denied his right to due process because he was  
4 convicted of felony murder when there was insufficient evidence to support the predicate  
5 felony.

6 (7) Petitioner alleges he was denied his right to due process because, during voir  
7 dire, the jury panel was misinformed about their role in sentencing and Petitioner was  
8 denied the full use of his peremptory challenges.

9 Respondents filed their answer to Petitioner's Petition for Writ of Habeas Corpus on  
10 April 14, 2011. Petitioner filed a reply on June 17, 2011. On July 19, 2011, the  
11 Magistrate Judge issued his Report and Recommendation recommending that the Petition  
12 for Writ of Habeas Corpus be denied and dismissed with prejudice.

13 In his Report and Recommendation the Magistrate Judge advised the parties that  
14 they had 14 days from the date of service of a copy of the Report and Recommendation  
15 within which to file specific written objections with the Court. The time to file such  
16 objections has since expired and no objections to the Report and Recommendation have  
17 been filed.

18 The Court finds itself in agreement with the Report and Recommendation of the  
19 Magistrate Judge.

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

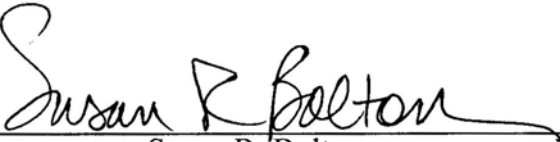
22 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is denied  
23 and dismissed with prejudice.

24 IT IS FURTHER ORDERED denying any Certificate of Appealability and leave  
25 to proceed *in forma pauperis* on appeal because Petitioner has not made a substantial  
26 showing of the denial of a constitutional right as required by 28 U.S.C.A. § 2253(c)(2).  
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IT IS FURTHER ORDERED directing the Clerk to enter judgment accordingly.

DATED this 8<sup>th</sup> day of August, 2011.

  
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Susan R. Bolton  
United States District Judge