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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Timothy Paul Olmos,
10 Petitioner,
11 v.
12 Charles L. Ryan, et al.,
13 Respondents.

No. CV-11-00344-PHX-GMS

ORDER

14 Pending before this Court are a Report and Recommendation (R&R) issued by
15 Magistrate Judge Bridget S. Bade regarding Claim Thirteen of Petitioner Timothy Paul
16 Olmos's Petition for Habeas Corpus (Doc. 87) and Petitioner's Motion for Certificate of
17 Appealability (Doc. 88). For the following reasons, the Court accepts the R&R, denies
18 Petitioner's request for relief on Claim Thirteen, and denies Petitioner's Motion for a
19 Certificate of Appealability.

20 **BACKGROUND**

21 Olmos was indicted on one count of child molestation, one count of sexual
22 conduct with a minor, and one count of sexual abuse in Maricopa Superior Court on
23 August 20, 2004. (Doc. 40-1, Ex. A.) Under each count, the State alleged that Olmos had
24 committed a dangerous crime against children. On February 25, 2005, the jury returned a
25 verdict of guilty on the charges of child molestation and sexual abuse, but were unable to
26 arrive at a verdict on the charge of sexual conduct with a minor. (*Id.*, Ex. C.) The trial
27 court imposed a mitigated 15-year prison sentence, placed Olmos on lifetime probation,
28 and required him to register as a sex offender. (Doc. 40-4, Exs. E, F.)

1 As detailed in this Court’s earlier order concerning Olmos’s Petition for Habeas
2 Corpus, Olmos appealed his conviction and sentence, filed four petitions for post-
3 conviction relief, and eventually filed the instant writ of habeas corpus in federal court.
4 (Doc. 78 at 2–3.) Olmos’s federal petition asserted fourteen grounds for relief. (Doc. 1.)
5 In his Claim Thirteen, Olmos alleged that the registration requirements of the Sex
6 Offender Registration and Notification Act (“SORNA”) violate his First Amendment
7 rights. (Doc. 1 at 24.) Magistrate Judge Bade issued an R&R recommending denial of the
8 Petition and Certificate of Appealability. (Doc. 67.) Olmos timely filed objections to that
9 R&R, and the Court reviewed the Petition de novo. (Doc. 78.) The Court ultimately
10 accepted in part and denied in part Judge Bade’s R&R. (*Id.* at 36.) Because it had not
11 been briefed, the Court did not make a merits determination regarding Claim Thirteen.
12 Instead, the Court ordered that the parties file supplemental briefing on the issue, and
13 referred the case back to Magistrate Judge Bade for further consideration. (*Id.* at 34.)

14 The parties filed their supplemental briefing (Docs. 80, 85, 86) and Magistrate
15 Judge Bade issued a second R&R solely on this claim (Doc. 87). In her R&R, Magistrate
16 Judge Bade recommended dismissal of Claim Thirteen on the grounds that Olmos’s First
17 Amendment challenge is not cognizable under 28 U.S.C. § 2254, and thus the Court lacks
18 jurisdiction to hear the claim in that context. (Doc. 87.) Olmos did not file objections to
19 Judge Bade’s second R&R, but did file a Motion for Certificate of Appealability. (Doc.
20 88.) While the Court would typically treat this Motion as timely filed objections, Olmos
21 did not raise any arguments related to Claim Thirteen in his Motion. Thus, the Court is
22 unable to consider the Motion to include any timely filed objections to Magistrate Judge
23 Bade’s second R&R. The Court will review the second R&R and will then consider
24 Olmos’s Motion.

25 Discussion

26 I. Report and Recommendation Regarding Claim Thirteen

27 Petitioner did not file objections, which relieves the Court of its obligation to
28 review the R&R. *See United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003);

1 *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not . . . require any
2 review at all . . . of any issue that is not the subject of an objection.”); Fed. R. Civ. P.
3 72(b)(3) (“The district judge must determine de novo any part of the magistrate judge's
4 disposition that has been properly objected to.”). The Court has nonetheless reviewed the
5 R&R and finds that it is well-taken. The Court agrees that Petitioner’s First Amendment
6 challenge to SORNA’s registration requirement lacks the necessary nexus to his custody
7 required to confer jurisdiction under 28 U.S.C. § 2254(a).

8 The Court will accept the R&R and deny Claim Thirteen of the Petition (Doc. 1 at
9 24), having dismissed the other counts of the Petition in response to Magistrate Judge
10 Bade’s first R&R in this case (Doc. 78). *See* 28 U.S.C. § 636(b)(1) (stating that the
11 district court “may accept, reject, or modify, in whole or in part, the findings or
12 recommendations made by the magistrate”); Fed. R. Civ. P. 72(b)(3) (“The district judge
13 may accept, reject, or modify the recommended disposition; receive further evidence; or
14 return the matter to the magistrate judge with instructions.”).

15 **II. Motion for Certificate of Appealability**

16 Petitioner moves for a Certificate of Appealability. (Doc. 88.) He seeks to appeal
17 regarding seven issues: (1) whether the Court erred by refusing to accept his
18 supplemental memorandum; (2) whether the Court erred when it ruled he had not
19 overcome the procedural bar on his claim regarding the State’s use of peremptory
20 challenges; (3) whether the Court erred in its analysis of Claim Six; (4) whether the Court
21 erred in ruling that SORNA complies with the necessary and proper clause as applied to
22 individuals convicted in state court; (5) whether the Court erred when it denied his
23 motion to stay his mixed petition while he exhausted certain claims in state court; (6)
24 whether the Court erred when it found that SORNA does not violate the Equal Protection
25 Clause; and (7) whether the Court erred when it found Claims One, Two, Four, Five,
26 Eight, Ten, and Fourteen were procedurally barred. (Doc. 88 at 1–2.)

27 In her first and second R&Rs (Doc. 67 at 30; Doc. 87 at 9), Magistrate Judge Bade
28 recommended that the Certificate of Appealability be denied as the dismissal of the

1 Petition is justified by a plan procedural bar and because Petitioner has not made a
2 substantial showing of the denial of a constitutional right. The Court agrees. Pursuant to
3 Rule 11(a) of the Rules Governing Section 2254 Cases, the Court declines to issue a
4 Certificate of Appealability because reasonable jurists would not find the Court's
5 procedural ruling debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

6 Therefore,

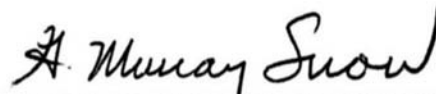
7 **IT IS ORDERED** that Magistrate Judge Bade's R&R (Doc. 87) is **accepted**.

8 **IT IS FURTHER ORDERED** that Claim Thirteen of Petitioner's Petition of Writ
9 of Habeas Corpus (Doc. 1) is **denied and dismissed** for lack of jurisdiction.

10 **IT IS FURTHER ORDERED** that Petitioner's Motion for Certificate of
11 Appealability (Doc. 88) is **denied**.

12 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
13 Section 2254 Cases, in the event Petitioner files an appeal, the Court declines to issue a
14 certificate of appealability because reasonable jurists would not find the Court's
15 procedural ruling debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

16 Dated this 10th of March, 2014.

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19 |G. Murray Snow
20 United States District Judge
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