

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Wilson Yazzie Jean,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

No. CV-12-00799-PHX-PGR (SPL)

ORDER

The Court having reviewed *de novo* the Report and Recommendation of Magistrate Judge Logan, filed on October 31, 2012, notwithstanding that no party has filed any objection to the Report and Recommendation, the Court finds that the Magistrate Judge correctly determined that Grounds One and Two of the petitioner's habeas petition, which he filed pursuant to 28 U.S.C. § 2254, should be dismissed and that the petitioner's claim for ineffective assistance of counsel, which he raised only in his Traverse, should also be dismissed.

First, Grounds One and Two must be dismissed because they are procedurally defaulted inasmuch as the petitioner failed to fairly present them in state court, he has not shown any cause for the default or any actual prejudice arising from the default, and he has he demonstrated that any miscarriage of

1 justice would result if the merits of the claims are not addressed. Furthermore, the
2 claims are not in any case cognizable federal claims.

3 Second, assuming that the petitioner has properly raised an ineffective
4 assistance of counsel claim, the claim must be dismissed because the petitioner has
5 not demonstrated that the state court's decision that the petitioner had not satisfied
6 the Strickland test is contrary to or an unreasonable application of clearly established
7 Supreme Court law or that it was based on an unreasonable determination of the
8 facts in light of the evidence presented in the state court. Therefore,


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

11 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C.
12 § 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied and that
13 this action is dismissed with prejudice.

14 IT IS FURTHER ORDERED that no certificate of appealability shall issue and
15 leave to appeal *in forma pauperis* is denied because the dismissal of the petitioner's
16 habeas petition is justified because the petitioner has not made a substantial
17 showing of the denial of a constitutional right.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
19 accordingly.

20 DATED this 18th day of December, 2012.

21
22 
23 Paul G. Rosenblatt
24 United States District Judge
25
26