

1 NOT FOR PUBLICATION
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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Gregory J. Korba,
9

10 Petitioner,

11 v.

12 Arizona Attorney General, et al.,

13 Respondents.

No. CV-12-00857-PHX-SRB

ORDER

14
15 Petitioner, Gregory J. Korba, filed his Amended Petition Under 28 U.S.C. § 2254
16 for Writ of Habeas Corpus by a Person in State Custody on May 21, 2012. He raises the
17 following seven claims: 1) his rights to due process and a fair trial were denied because
18 the state lost or suppressed exculpatory evidence; 2) his rights to due process and a fair
19 trial were denied because the state's loss of evidence was not cured by the "Willits"
20 instruction; 3) his rights to due process and a fair trial were denied because the prosecutor
21 suppressed evidence and used perjured testimony to obtain a conviction; 4) his rights to
22 due process and a fair trial were denied because he was convicted and is actually innocent
23 such conviction resulting because rules of criminal procedure were violated by the trial
24 court; 5) his rights to due process and a fair trial were denied because the rules of
25 criminal procedure were violated and the trial court gave an improper jury instruction; 6)
26 his rights to due process and a fair trial were denied because the trial court failed to
27 declare a mistrial when certain alleged undisclosed police reports were used to refresh a
28 witness's recollection; and 7) his rights to due process and a fair trial were denied

1 because the prosecutor introduced previously suppressed evidence before the jury.

2 Respondents answered and argued that the Petition was not filed within the statute
3 of limitations and that Petitioner's claims lack merit.

4 The Magistrate Judge issued his Report and Recommendation on April 23, 2013,
5 recommending that the Petition be denied and dismissed with prejudice. With respect to
6 the statute of limitations, the Magistrate Judge found that, because it was arguable that
7 there was equitable tolling of the statute of limitations, he would review the merits of
8 each claim. With respect to the seven claims, the Magistrate Judge found that claims one,
9 two and three were properly presented to the Arizona state courts and that the Arizona
10 state court's decision was not clearly contrary to nor an unreasonable application of
11 federal law. He recommended that habeas relief be denied on claims one, two and three.

12 The Magistrate Judge found that claim four, while raised in the Arizona state
13 courts, was an issue of state law, federal habeas relief does not lie for alleged errors of
14 state law and, therefore, this claim for federal habeas relief should be denied.

15 With respect to claims five, six and seven the Magistrate Judge found that these
16 claims were not presented in a procedurally correct manner, Petitioner had not
17 established cause for, nor prejudice arising from, his procedural default of the claims and,
18 therefore, the Court was precluded from granting relief on the merits of the claim and
19 should not consider the merits.

20 On May 8, 2013, Petitioner filed Objections to the Report and Recommendation of
21 the Magistrate Judge. In his objections Petitioner reargued his interpretation of the trial
22 evidence and why, in his view, it did not support his conviction and why there were
23 evidentiary errors committed by the state court resulting in denial of due process and a
24 fair trial. Petitioner failed to point to specific errors in the reasoning of the Magistrate
25 Judge in his Report and Recommendations and fails to acknowledge the standards that
26 the federal courts must apply to state court rulings on federal constitutional claims.

27 The Court has reviewed the Amended Petition, Answer, Report and
28 Recommendation of the Magistrate Judge and Objections. The Court finds itself in

1 agreement with the Report and Recommendation of the Magistrate Judge. The Court
2 finds that the objections are without merit and are overruled.

3 IT IS ORDERED adopting the Report and Recommendation of the Magistrate
4 Judge as the Order of this Court.

5 IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Habeas Corpus
6 is denied and dismissed with prejudice.

7 IT IS FURTHER ORDERED denying a certificate of appealability because
8 Petitioner has not made a substantial showing of the denial of a constitutional right with
9 respect to his claims one, two, three and four. With respect to claims five, six and seven,
10 jurist of reason would not find the procedural ruling debatable.

11 Dated this 6th day of June, 2013.

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Susan R. Bolton
United States District Judge