

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 D. Ryan Jones,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.  
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No. CV-13-00813-PHX-SRB

**ORDER**

15 Petitioner, D. Ryan Jones, filed his Petition for Writ of Habeas Corpus raising two  
16 claims; 1) ineffective assistance of counsel; and 2) a due process violation when his  
17 sentence was enhanced without a factual basis. Petitioner's claim of ineffective assistance  
18 of counsel raised two arguments. He argued that counsel were ineffective in failing to  
19 investigate the alleged likelihood he suffers from Asperger's Syndrome and in failing to  
20 investigate his difficult childhood. Petitioner's claimed due process violation was an  
21 alleged illegal enhancement of his sentences without a factual basis that his conduct was  
22 "focused on, directed against, aimed at, or target[ed] a victim under the age of fifteen or  
23 required under the state's sentencing statute."

24 The Magistrate Judge filed her Report and Recommendation recommending that  
25 the Petition be denied. She found no ineffective assistance regarding the alleged  
26 likelihood of Asperger's Syndrome because, even if there were some deficiency in  
27 counsel's investigation, Petitioner had not shown prejudice because his assertion of  
28 Asperger's Syndrome is speculative and he identified no evidence counsel would have

1 discovered with further investigation. Therefore, Petitioner failed to show the state  
2 court's resolution of this claim was contrary to or based on an unreasonable application  
3 of federal law or an unreasonable determination of the facts. The Magistrate Judge also  
4 found counsel were not ineffective for failing to investigate and present evidence of his  
5 traumatic childhood because Petitioner failed to identify any further mitigation  
6 information counsel might have uncovered with additional investigation. Therefore, the  
7 Petitioner failed to show that the state court's denial of this claim of ineffective assistance  
8 of counsel was contrary to or based on an unreasonable application of federal law or  
9 based on unreasonable determination of the facts.

10 On Petitioner's claim of a due process violation at sentencing, the Magistrate  
11 Judge found that, even if there was error any error was harmless because the error did not  
12 have a substantial injurious effect or influence on the sentences because the record  
13 contained sufficient evidence to support factual findings for the applicability of the  
14 sentencing enhancement.

15 Finally, the Magistrate Judge recommended denial of a Certificate of  
16 Appealability because Petitioner made no substantial showing of the denial of a  
17 constitutional right.

18 Petitioner's timely Objections to Magistrate's Report and Recommendation raise  
19 only two objections. Petitioner argues that the Magistrate Judge erred in concluding that  
20 the state Court of Appeals had applied to the *Strickland* standard to Petitioner's  
21 ineffective assistance of counsel claims and in finding that he failed to make a substantial  
22 showing of the denial of a constitutional right allowing a Certificate of Appealability.

23 The Court will overrule the objections because on *de novo* review of the record the  
24 Court agrees with the Magistrate Judge that the state appellate court applied the correct  
25 standard for ineffective assistance and that Petitioner has failed to make a substantial  
26 showing of the denial of his constitutional rights.

27 *Strickland v. Washington*, 466 U.S. 668, 687 (1984), requires a petitioner to show  
28 that counsel's performance was objectively deficient and that deficient performance

1 prejudiced the petitioner. In addressing Petitioner's claims of ineffective assistance of  
2 counsel the state Court of Appeals expressed the standard as follows: "Generally, '[t]o  
3 state a colorable claim of ineffective assistance of counsel, a defendant must show both  
4 that counsel's performance fell below objectively reasonable standards and that this  
5 deficiency prejudiced the defendant.' *State v. Bennett*, 213 Ariz. 562, ¶21, 146 P.3d 63,  
6 68 (2006)." (Doc. 9, Resp't Answer to Pet. for Writ of Habeas Corpus, Ex. L)

7 While the state court cited the Arizona Supreme Court's decision in *State v.*  
8 *Bennett* for the standard rather than *Strickland*, this is the *Strickland* standard as  
9 recognized by the Arizona Supreme Court in *Bennett*.

10 To state a colorable claim of ineffective assistance of counsel, a defendant  
11 must show both that counsel's performance fell below objectively  
12 reasonable standards and that this deficiency prejudiced the defendant.  
13 *Strickland*, 466 U.S at 687, 104 S.Ct 2052. Failure to satisfy either prong  
14 of the *Strickland* test is fatal to an ineffective assistance of counsel claim.  
15 *Id.*; *State v. Salazar*, 146 Ariz. 540, 541, 707 P.2d 944, 945 (1985).

16 *State v. Bennett*, 213 Ariz. 562 § 21, 146 P.2d 63, 68 (2006). Because the Arizona court  
17 applied the proper standard, Petitioner's objection is without merit and he has also failed  
18 to make a substantial showing of the denial of a constitutional right.

19 IT IS ORDERED overruling Petitioner's Objections to Magistrate's Report and  
20 Recommendation. (Doc. 13)

21 IT IS FURTHER ORDERED adopting the Report and Recommendation of the  
22 Magistrate Judge as the Order of this Court. (Doc. 12)

23 IT IS FURTHER ORDERED denying Petitioner's Writ of Habeas Corpus.

24 IT IS FURTHER ORDERED denying a Certificate of Appealability because  
25 Petitioner has not made a substantial showing of the denial of a constitutional right.

26 Dated this 27th day of June, 2014.

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Susan R. Bolton  
United States District Judge