

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
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Charles Scott Taylor,
Petitioner,
v.
Charles L Ryan; et al.,
Respondents.

No. CV-13-00853-PHX-GMS

ORDER

Pending before the Court is Petitioner Charles Scott Taylor’s Petition for Writ of Habeas Corpus. (Doc. 1.) Magistrate Judge Mark E. Aspey issued a Report and Recommendation (“R&R”) in which he recommended that the Court deny the Petition with prejudice. (Doc. 17.) Taylor filed objections to the R&R. (Doc. 22.) Because objections have been filed, the Court will review the Petition de novo. *See United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). For the following reasons, the Court accepts the R&R and denies the Petition.

BACKGROUND

Taylor was convicted by a jury in Pinal County Superior Court, case #CR2007-01800, of one count of sexual conduct with a minor under 15 years of age, one count of sexual abuse of a minor under 15 years of age, one count of molestation of a minor under 15 years of age, and, in a related matter that was consolidated with these charges, two counts of witness tampering. (Doc. 12, Exs. B, M.) Twelve days before Taylor’s trial, the trial court held a hearing on his motion to change defense counsel. (Doc. 12, Ex. A.) This

1 motion was denied at the conclusion of the hearing. (*Id.*) On June 2, 2008, he was
2 sentenced to a combination of aggravated and presumptive, concurrent and consecutive
3 terms of imprisonment totaling 52 years. (*Id.*, Ex. M.)

4 Petitioner appealed the judgment. He argued that the trial court improperly denied
5 his motion to preclude expert testimony about the behavior of child victims of sexual
6 assault and that his sentences were improperly enhanced. (Doc. 12, Ex. B.) On October
7 14, 2009, the Court of Appeals affirmed Petitioner's convictions and sentences. (*Id.*, Ex.
8 D.) Taylor did not seek review of this decision in the Arizona Supreme Court.

9 Petitioner timely initiated an action for state post-conviction relief under Rule 32
10 of the Arizona Rules of Criminal Procedure. He was appointed counsel to represent him
11 in that action and that counsel notified the state court that they could find no legitimate
12 claims to raise on Taylor's behalf. (Doc. 12, Ex. E.) Taylor filed a *pro se* brief in his Rule
13 32 action. (*Id.*, Ex. F.) He asserted that the trial court erred in denying his motion to
14 change counsel and that his appellate counsel was ineffective because counsel did not
15 raise this issue in his direct appeal. (*Id.*, Exs. F, G.) On July 7, 2011, the trial court denied
16 Taylor relief in his Rule 32 petition, finding no error in the court's denial of Taylor's
17 motion or in appellate counsel's failure to raise that issue on direct appeal. (*Id.*, Ex. G.)

18 Petitioner then initiated a second Rule 32 action, asserting that the sentencing
19 judge erred in imposing a consecutive sentence. (*Id.*, Ex. H.) On August 19, 2011, the
20 trial court dismissed this action pursuant to Rule 32 because Taylor could have but did
21 not raise this issue on direct appeal. (*Id.*, Ex. I.) Further, the trial court found that the
22 claim also failed on its merits. (*Id.*)

23 In separate petitions for review filed in the Arizona Court of Appeals and
24 consolidated by that court, Taylor challenged the imposition of consecutive sentences and
25 alleged that he was denied the right to effective assistance of appellate and post-
26 conviction counsel. (*Id.*, Exs. J, K.) On January 12, 2012, in a memorandum decision, the
27 appellate court granted review and denied relief. (Doc. 1 at 28.) The court rejected his
28 claims regarding the imposition of consecutive sentences and ineffective appellate

1 counsel, and found he had failed to properly present his claim regarding ineffective
2 assistance of post-conviction counsel. (*Id.*) Taylor sought review of this decision by the
3 Arizona Supreme Court, and that review was denied. (*Id.* at 27.)

4 Petitioner filed the instant Petition for Writ of Habeas Corpus on April 26, 2013.
5 (Doc. 1.) In his Petition, Taylor cites three grounds for relief: (1) that the trial court’s
6 denial of his motion to substitute counsel violated his federal constitutional rights; (2)
7 that his appellate counsel’s performance was unconstitutionally ineffective; and (3) that
8 the trial court’s imposition of consecutive sentences violated his federal constitutional
9 rights.

10 Magistrate Judge Aspey issued a R&R on November 14, 2013, in which he
11 recommended denial of the Petition with prejudice. (Doc. 17.) Petitioner filed objections
12 to the R&R on January 17, 2014 (Doc. 22), and the Court will now review the Petition de
13 novo.

14 DISCUSSION

15 The writ of habeas corpus affords relief to persons in custody in violation of the
16 Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3)(2006). Review
17 of Petitions for Habeas Corpus is governed by the Antiterrorism and Effective Death
18 Penalty Act of 1996 (“AEDPA”). *Id.*; U.S.C. § 2244 *et seq.*

19 I. Claim One: Denial of Motion to Substitute Counsel

20 Taylor first alleges that the trial court erred by denying his motion to substitute
21 counsel prior to trial. Respondents contend that Taylor failed to properly exhaust this
22 claim in his direct appeal because he referenced the substance of the claim as part of a
23 claim of ineffective assistance of appellate counsel. However, assuming without deciding
24 that Petitioner technically properly exhausted this claim, the claim fails on its merits.
25 When a defendant has indicated dissatisfaction with his counsel, a trial court must
26 generally conduct a thorough inquiry into whether the situation is depriving the defendant
27 of an adequate defense. *See Schell v. Witek*, 218 F.3d 1017, 1024–25 (9th Cir. 2000). To
28 determine whether the trial court judge erred in denying Taylor’s motion, this Court may

1 consider the extent of the alleged conflict, whether the trial judge appropriately inquired
2 into the extent of that conflict, and the timeliness of the motion to change counsel. *See,*
3 *e.g., Daniels v. Woodford*, 428 F.3d 1181, 1197–98 (9th Cir. 2005). The Court has
4 reviewed the transcript from the trial court’s hearing on Taylor’s motion and finds that
5 the trial judge made an appropriate inquiry into the alleged conflict. Thus, the Court finds
6 that the denial of Taylor’s motion did not violate his right to a fair trial or to due process
7 of law. This portion of the R&R is accepted.

8 **II. Claim Two: Ineffective Assistance of Counsel**

9 Taylor next alleges that he was denied his Sixth Amendment right to effective
10 assistance of counsel because his appellate counsel failed to argue that the trial court
11 erred by denying his motion to substitute counsel. Petitioner properly exhausted this
12 claim in state court. To state a claim for ineffective assistance of counsel, Taylor must
13 demonstrate both that his counsel’s representation fell below the objective standard of
14 reasonableness and that this resulted in prejudice. *Strickland v. Washington*, 466 U.S.
15 668, 687 (1984). To show prejudice, Taylor must show that there is a reasonable
16 probability, but for counsel’s unprofessional errors, that the result of the proceeding
17 would have been different. *Id.*

18 Here, the state court concluded that Taylor had not been denied effective
19 assistance of counsel due to counsel’s failure to challenge the denial of Taylor’s motion
20 as this did not constitute deficient performance and was not prejudicial. In his Petition,
21 Taylor argues that the trial judge’s failure to conduct a thorough inquiry in his
22 consideration of Taylor’s motion to substitute counsel was a constitutional violation, and
23 thus his appellate counsel was deficient for failing to raise that violation. (Doc. 1 at 20–
24 21.) However, as stated above, the motion hearing transcript indicates that the trial judge
25 did undertake the necessary inquiry regarding the motion. Thus, Taylor’s appellate
26 counsel did not err in failing to challenge that inquiry. This alleged failure does not
27 constitute inadequate performance and Taylor has not established that there is any
28 probability that exclusion of the challenge amounted to prejudice. This portion of the

1 R&R is accepted.

2 **III. Claim Three: Imposition of Consecutive Sentences**

3 Finally, Taylor claims that the trial court erred in imposing consecutive sentences
4 because this violated his right to due process and subjected him to double jeopardy.
5 Federal habeas relief is not available for alleged errors in the interpretation and
6 application of state law, including a state's statutes regarding sentencing. *See Estelle v.*
7 *McGuire*, 502 U.S. 62, 67–68 (1991); *Hubbart v. Knapp*, 379 F.3d 773, 780 (9th Cir.
8 2004) (“We may not second-guess the [state court’s] construction of its own state law
9 unless ‘it appears that its interpretation is an obvious subterfuge to evade consideration of
10 a federal issue.’”). In his Objections to the R&R, Taylor states that the state’s
11 interpretation of their sentencing law is indeed “an obvious subterfuge to evade
12 consideration to a federal issue,” but he has provided no basis for this contention. As
13 Taylor asserts that his sentences violated his right to due process because they were
14 improperly imposed as consecutive sentences under Arizona law, he has not stated a
15 cognizable claim for federal habeas relief. *Beaty v. Stewart*, 303 F.3d 975, 986 (9th Cir.
16 2002) (stating that Petitioner’s argument that “the trial court improperly imposed
17 consecutive sentences in violation of Arizona law” is “not cognizable in federal habeas
18 proceedings”). This portion of the R&R is also accepted.

19 **CONCLUSION**

20 Petitioner’s Claims One and Two fail on their merits and his Claim Three is not a
21 cognizable basis for federal habeas relief. Thus, the Court denies his petition.

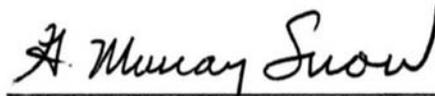
22 **IT IS THEREFORE ORDERED** that Magistrate Judge Aspey’s Report and
23 Recommendation (Doc. 17) is **ACCEPTED**.

24 **IT IS FURTHER ORDERED** that Charles Scott Taylor’s Petition for Writ of
25 Habeas Corpus (Doc. 1) is **DENIED** and **DISMISSED WITH PREJUDICE**.

26 **IT IS FURTHER ORDERED** that, pursuant to Rule 11(a) of the Rules
27 Governing Section 2254 cases, in the event Petitioner files an appeal, the Court declines
28 to issue a Certificate of Appealability because reasonable jurists would not find the

1 Court's procedural ruling debatable, *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000),
2 and because Petitioner has not made a substantial showing of the denial of a
3 constitutional right.

4 Dated this 1st day of May, 2014.

5
6
7 

8 _____
9 G. Murray Snow
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28