

1 NOT FOR PUBLICATION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 Salvador Sanchez Macias,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.
14

No. CV-13-00943-PHX-SRB

ORDER

15 On May 6, 2013, Petitioner filed his Petition for Writ of Habeas Corpus claiming
16 that his Fifth, Sixth and Fourteenth Amendment rights were violated when the trial court
17 changed the plea agreement without his knowledge or permission, by the prosecutors
18 misrepresentation of Arizona statutes in the plea agreement, and because Petitioner's
19 counsel was ineffective for not objecting to changes in the plea agreement. Petitioner
20 also alleged a second ground which was dismissed on screening because Petitioner failed
21 to assert a violation of the constitution, laws or treaties of the United States. In Ground
22 Two Petitioner states that the question before the Court was whether Arizona Rule 32.3
23 was unconstitutional "due to the fact that it innates the suspension of a writ of habeas
24 corpus to Arizona state prisoners?" (Doc. 1, Pet'r's Pet. for Writ of Habeas Corpus at 6.)

25 Respondents filed a response to the petition on September 26, 2013 and Petitioner
26 filed a reply/traverse on October 7, 2013. The Magistrate Judge issued a Report and
27 Recommendation on December 18, 2013 recommending that the petition be dismissed
28 without prejudice.

1 The record reflects and Petitioner does not dispute that there is a pending Petition
2 for Review before the Arizona Court of Appeals of the dismissal of Petitioner's state
3 court Petition for Post-Conviction Relief. The sole ground raised in the state court
4 petition was a claim of newly discovered evidence.

5 As the Magistrate Judge noted and as Respondents argued the claims Petitioner
6 raises before this Court have never been presented to the state court. Petitioner argues
7 that this court should resolved the questions in any event, even though he has not
8 presented them to the state court. The Magistrate Judge rejected Petitioner's contention
9 that this Court has the authority to bypass state remedies and recommended that this
10 petition be dismissed without prejudice to allow the conclusion of the state court
11 proceedings.

12 Petitioner filed timely written objections on January 10, 2014, in which he claims
13 that this Court must determine if state officers committed an unethical judicial act or
14 committed a criminal act and violated Petitioner's constitutional rights and substantive
15 due process rights in connection with his allegation that the plea agreement was changed
16 and that the prosecutor made misrepresentations about Arizona statutes and the plea
17 agreement. Petitioner's objection also states that the Court should determine issues
18 related to the federal statute of limitations.

19 Petitioner's objections are overruled. The Magistrate Judge explained in the
20 Report and Recommendation why exhaustion in state court is required before the issues
21 raised in this petition are brought to federal court. The Magistrate Judge also found that
22 there was no apparent prejudice to Petitioner from a dismissal without prejudice
23 explaining that Petitioner would have at least six months of his one-year limitation period
24 remaining upon the conclusion of his state court proceedings.

25 This Court agrees with the Report and Recommendation of the Magistrate Judge
26 that dismissal without prejudice is the appropriate remedy in this case because it cannot
27 be disputed that Petitioner has failed to exhaust his claims in state court and that he still
28 has state court proceedings pending.

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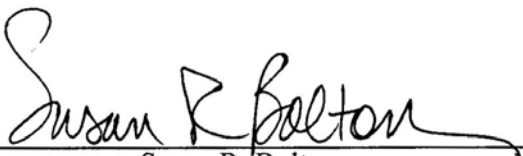
IT IS ORDERED overruling the objections of the Petitioner to the Report and Recommendation of the Magistrate Judge.

IT IS FURTHER ORDERED adopting the Report and Recommendation of the Magistrate Judge as the Order of this Court. (Doc. 16)

IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is dismissed without prejudice. (Doc. 1)

IT IS FURTHER ORDERED denying a Certificate of Appealability because jurist of reason would not find it debatable whether this Court was correct in its procedural ruling.

Dated this 31st day of January, 2014.



Susan R. Bolton
United States District Judge