

1
2
3
4
5
6
7
8
9
10
11
12
13
14

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

Michael Emerson Correll,
Petitioner,
v.
Charles L. Ryan, et al.,
Respondents.

No. CV-13-01380-PHX-SMM
ORDER

Pending before the Court is Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) The matter was referred to Magistrate Judge John Z Boyle for a Report and Recommendation ("R & R"). (Doc. 21.) On October 15, 2015, the Magistrate Judge filed a Report and Recommendation with this Court. (Doc. 37.) Immediately after the Magistrate Judge filed his R & R, Petitioner requested an extension of time to file his objection (Doc. 38), which the Court granted. (Doc. 40.) Petitioner then timely filed his objections to the R &R (Doc. 41), to which Defendants have replied (Doc. 42).

STANDARD OF REVIEW

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C); see Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991). When reviewing a Magistrate Judge's R & R, this Court "shall make a de novo determination of those portions of the report . . . to

1 which objection is made,” and “may accept, reject, or modify, in whole or in part, the
2 findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C);
3 see also Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991) (citing Britt v. Simi
4 Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983)).

6 **DISCUSSION¹**

7 Having reviewed the R & R of the Magistrate Judge, the Court concludes that
8 Petitioner’s Petition for Writ of Habeas Corpus should be denied. The Court hereby
9 incorporates and adopts the Magistrate Judge’s R & R.

10 The Court will briefly address Petitioner’s Objections. In his Petition for Writ of
11 Habeas Corpus, Petitioner raised twenty-one (21) grounds for relief. (Doc. 6 at 2-3.)
12 Now, Petitioner makes only two (2) specific Objections to the Magistrate Judge’s
13 findings, those dealing with the issues of double jeopardy and ineffective assistance of
14 appellate counsel. (Doc. 41.) As to the other nineteen (19) claims, Petitioner states that,

15 The claims not argued here, I fully include in my objection not to be
16 dismissed as recommended. My not putting each claim in this objection
17 argument is simply to covience [*sic*] the Court and in no way should be
seen as conceding any part of the Habeas Petition to the Magistrate[’]s
recommendation.

18 (Id. at 2.)

19 The Court finds this general objection inadequate and not worthy of review. Under
20 Federal Rule of Civil Procedure 72, the district judge must review *de novo* those portions
21 of the R & R that have been “properly objected to.” Fed.R.Civ.P. 72 (b). A proper
22 objection requires “*specific written objections* to the proposed findings and
23 recommendations.” Id. (emphasis added); see 28 U.S.C. § 636(b)(1). One purpose of this
24 requirement is judicial economy—to permit magistrate judges to hear and resolve matters
25 not objectionable to the parties. See Thomas v. Arn, 474 U.S. 140, 149 (1985). Because
26 *de novo* review of an entire R & R would defeat the efficiencies intended by Congress, a

27 ¹The factual and procedural history of this case is set forth in the Magistrate
28 Judge’s Report and Recommendation (Dkt. 279).

1 general objection “has the same effect as would a failure to object.” Warling v. Ryan, No.
2 CV 12-01396-PHX-DGC, 2013 WL 5276367, at *2 (D. Ariz. Sept. 19, 2013) (quoting
3 Howard v. Sec’y of Health & Human Servs., 932 F.2d 505, 509 (6th Cir. 1991)). As a
4 result, the Court has no obligation to review Petitioner’s general objection to the R & R.
5 See Thomas, 474 U.S. at 149 (no review is required for “any issue that is not the subject
6 of an objection.”).

7 The Court will now turn to Petitioner’s specific objections. Petitioner first objects
8 to the Magistrate Judge’s findings regarding his complaint that his right to be free from
9 double jeopardy was violated when the state court ordered he serve consecutive sentences
10 on Counts 1, 2, and 3. The Arizona Court of Appeals determined that Petitioner’s original
11 sentences, under state law, were not designated as concurrent sentences. State v. Correll,
12 No. 1 CA-CR 11-0188, 2011 WL 6747411, at *3 (Ariz. Ct. App. Dec. 22, 2011).
13 Petitioner adamantly argues to the contrary, asserting that the Court of Appeals judge
14 misapplied Arizona sentencing laws. The Magistrate Judge found that “[f]ederal habeas
15 relief is not available for alleged errors in the interpretation or application of state law,
16 including statutes regarding imposition of sentences.” (Doc. 37 at 16-17.) This Court
17 agrees. Federal courts cannot provide relief from the misapplication or misinterpretation
18 of state laws. Estelle v. McGuire, 502 U.S. 62, 67-8 (1991) (stating that “federal habeas
19 corpus relief does not lie for errors of state law”); see, e.g., Christian v. Rhode, 41 F.3d
20 461, 469 (9th Cir. 1994).

21 Next, Petitioner objects to the Magistrate Judge’s conclusion that he was not
22 denied effective assistance of appellate counsel. Petitioner claims that appellate counsel
23 was ineffective for failing discuss with him what he thought to be appealable issues,
24 including prosecutorial misconduct and the right to confront/cross-examine the state’s
25 witness at sentencing. (Doc 1 at 28.) Petitioner also claims that appellate counsel did not
26 thoroughly review the record as evidenced by her subsequently filing an Anders Brief
27 because she found no appealable issues. (Id. at 28.) Both the Magistrate Judge and the
28 Arizona Court of Appeals concluded that there was no prosecutorial misconduct and that

1 Petitioner did not possess the right to cross-examination at sentencing, meaning appellate
2 counsel was not ineffective for failing to raise those issues on appeal. This Court agrees.
3 Having reviewed the record, the Court concludes that these claims were meritless.
4 Regardless of Petitioner’s opinion on the matter, appellate counsel was not required to
5 raise meritless claims on appeal. See Sexton v. Cozner, 679 F.3d 1150, 1157 (9th Cir.
6 2012) (“Counsel is not necessarily ineffective for failing to raise even a nonfrivolous
7 claim, so clearly we cannot hold counsel ineffective for failing to raise a claim that is
8 meritless.” (citations omitted)). Therefore, the Court finds that Petitioner is not entitled to
9 relief on this claim.

10 Having reviewed the legal conclusions of the R & R of the Magistrate Judge, and
11 the objections having been made by Petitioner thereto, the Court finds that the Magistrate
12 Judge adequately addressed all of Petitioner's arguments. Therefore, the Court hereby
13 incorporates and adopts the Magistrate Judge’s R & R.

14 CONCLUSION

15 Accordingly, for the reasons set forth,

16 **IT IS HEREBY ORDERED** that the Court adopts the Report and
17 Recommendation of the Magistrate Judge. (Doc. 37.)

18 **IT IS FURTHER ORDERED DENYING** Petitioner’s Motion for Evidentiary
19 Hearing. (Doc. 34.)

20 **IT IS FURTHER ORDERED** that Petitioner’s Petition for Writ of Habeas
21 Corpus is **DENIED and DISMISSED WITH PREJUDICE**, terminating this case. The
22 Clerk of the Court shall enter judgment accordingly.

23 **IT IS FURTHER ORDERED** that a Certificate of Appealability and leave to
24 proceed *in forma pauperis* on appeal are **DENIED** because the dismissal was justified by

25 ///

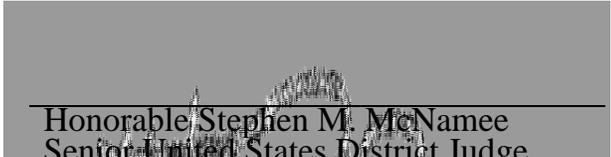
26 ///

27 ///

28 ///

1 a plain procedural bar and jurists of reason would not find the procedural ruling
2 debatable.

3 Dated this 10th day of February, 2016.

4
5
6 
7 Honorable Stephen M. McNamee
8 Senior United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28