

1 NOT FOR PUBLICATION  
2  
3  
4  
5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Jeffrey Dale Woods,

10 Petitioner,

11 v.

12 Charles L. Ryan,

13 Respondent.

No. CV-13-2518-PHX-JJT

**ORDER**

14  
15 At issue is Magistrate Judge John Z. Boyle's Report and Recommendation  
16 (Doc. 28)(hereinafter the "R&R"), regarding Jeffrey Dale Woods's Petition for Writ of  
17 Habeas Corpus (Doc. 1). Petitioner in pro se filed Objections (Doc. 31) to the R&R and  
18 Respondent Charles L. Ryan filed no Response to the Objections. After considering all  
19 of the above filings, the Court will grant the Petition with regard to Ground One and  
20 reduce Petitioner's sentence from 23.25 years to 23.1 years, and deny the remainder of  
21 the Petition.

22 The Court concludes that Magistrate Judge Boyle's analysis of the issues in the  
23 R&R is thorough and uniformly correct. Because the R&R exhaustively treated with the  
24 facts and procedural history of the underlying criminal matter and the Petition, the Court  
25 will not recount them here. Judge Boyle concluded that regarding Grounds Two, Three  
26 and Five, involving his claims of the state trial court's inappropriate "duplicative" use of  
27 prior convictions, its failure to provide Petitioner with an opportunity to withdraw from  
28 his plea, and his PCR counsel's ineffectiveness, Petitioner did not exhaust these claims in

1 state court and that they cannot now be raised in a state forum because they are  
2 procedurally barred; moreover, Judge Boyle correctly found that procedural default  
3 cannot be overcome on any of those claims because Petitioner cannot show cause for or  
4 prejudice resulting from any of them. The R&R also concluded that while Petitioner did  
5 effectively exhaust in state court Ground Four, dealing with his claim that trial counsel  
6 was ineffective for allowing misuse of prior convictions at sentencing, and so it was  
7 properly before this Court on habeas review, Ground Four nonetheless failed on the  
8 merits. In his Objections, Petitioner did not take issue with any of the R&R's  
9 recommendations respecting Grounds Two through Five, and they will be dismissed.

10 Petitioner does, however, object to Judge Boyle's recommendations with respect  
11 to Ground One—the claim that the state trial court imposed an impermissibly long  
12 sentence.<sup>1</sup> The R&R recognized that at the time of Petitioner's sentencing, the maximum  
13 allowable sentence for his kidnap charge was 23.1 years, as provided by the Arizona  
14 Legislature's amendment to A.R.S. § 13-703(I) effective January 1, 2009. But the trial  
15 court sentenced him to 23.25 years—the maximum under the version of Section 13-  
16 703(I) that had been in effect until January 1, 2009. Judge Boyle recommended this  
17 Court correct the sentence to reflect the correct applicable maximum sentence at the time  
18 of sentencing—23.1 years.

19 Petitioner objects to this recommendation, arguing that it does not go far enough.  
20 He urges that because his plea agreement referenced a superseded version of Section 13-  
21 703(I), this Court should not apply the then-correct version of that statute, or any other  
22 version of Section 13-703. According to Petitioner, A.R.S. § 13-702 is the only valid  
23 statute cited by his plea agreement and it limits his sentence to 12.5 years. Petitioner's  
24 argument, although not entirely clear, appears to be that this Court should ignore the  
25 version of Section 703(I) applicable as of December 1, 2009—the day he was  
26 sentenced—because it was not enacted at the time he committed his offenses of

---

27  
28 <sup>1</sup> Judge Boyle correctly found that Ground One, like Grounds Two, Three and  
Five, was unexhausted but procedurally defaulted. But Respondents agreed to waive the  
exhaustion requirement, allowing this Court to address Ground One on the merits.

1 conviction. This argument misapplies the Ex post Facto clause. Upon enactment, the  
2 2009 amendments to Section 13-703(I) operated to *decrease* Petitioner's exposure to  
3 incarceration and therefore are not subject to ex post facto. Petitioner's argument that the  
4 legal mistake in his plea agreement allowing for an over length sentence constituted a  
5 breach of the agreement by the State of Arizona is also incorrect. The remedy for an over  
6 length sentence is to reduce that sentence to bring it into line with legal limits, and that  
7 shortened sentence is less than what Petitioner knew to be permissible under the plea  
8 agreement when he made the agreement.

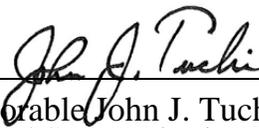
9 **IT IS ORDERED** accepting, adopting and incorporating by reference Magistrate  
10 Judge Boyle's Report and Recommendation and the analysis contained therein (Doc.  
11 28).

12 **IT IS FURTHER ORDERED** granting the Petition for a Writ of Habeas  
13 Corpus (Doc. 1) on Ground One only, for the reasons set forth above and in more detail  
14 in the incorporated Report and Recommendation, and reducing Petitioner's sentence to  
15 23.1 years on the kidnap conviction, with all other aspects of the sentence to remain  
16 unchanged.

17 **IT IS FURTHER ORDERED** denying the remainder of the Petition for  
18 the reasons set forth above and in more detail in the incorporated Report and  
19 Recommendation.

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

22 Dated this 27<sup>th</sup> day of July, 2015.

23  
24   
25 Honorable John J. Tuchi  
26 United States District Judge  
27  
28