

1 NOT FOR PUBLICATION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 Jose Abel Cabrera-Somosa,

No. CV-14-01202-PHX-SRB

10 Petitioner,

ORDER

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.

14 On June 2, 2014 Petitioner, Jose Abel Cabrera-Somosa, filed a Petition under 28
15 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody raising two
16 grounds for relief. Petitioner argues he was denied his Sixth Amendment right to
17 ineffective assistance of trial and appellate counsel because they failed to raise certain
18 sentencing issues on appeal. He also argues he received ineffective assistance of counsel
19 on appeal because his appellate counsel failed to raise an issue concerning his out-of-
20 court identification. Respondents filed a Limited Answer on September 2, 2014 asserting
21 that Petitioner's claims are procedurally defaulted. Petitioner filed a Limited Reply to the
22 Limited Answer on September 24, 2014.

23 On October 29, 2014, the Magistrate Judge issued her Report and
24 Recommendation in which she concluded that Petitioner's claims are procedurally
25 defaulted and recommended that the Petition be denied and dismissed with prejudice.
26 Petitioner filed a timely objection to the Magistrate Judge's Report and Recommendation
27 on November 10, 2014.

28 Petitioner's Objections address at length the limits placed on Arizona prisoners for

1 access to the prison law library and the time limitations that Arizona courts have
2 established for post-conviction relief proceedings. These arguments do not change the
3 fact that Petitioner has procedurally defaulted on the claims raised in this federal habeas
4 petition by failing to fairly present them to the Arizona Court of Appeals. As noted by the
5 Magistrate Judge, the Petition for Review of the denial of the Petition for Post-Conviction
6 Relief filed in the Arizona Court of Appeals consisted entirely of pages from his Post-
7 Conviction Relief petition with only a hand written first page that included the caption
8 and a hand written final page that consisted of a certificate of mailing. Importantly, the
9 Arizona Court of Appeals denied review because Petitioner failed to file the procedural
10 requirements for a Petition for Review. The Court agrees with the Magistrate Judge that
11 because Petitioner failed to comply with the state's procedural requirements and thus,
12 failed to fairly present his claims to the Arizona Court of Appeals, his claims are now
13 procedurally barred from federal habeas review. The alleged deficiencies in the Arizona
14 rules and in the availability of prison law libraries do not show cause and prejudice to
15 excuse this procedural default and there is no argument that there was a fundamental
16 miscarriage of justice.

17 IT IS ORDERED overruling Petitioner's Objections to the Report and
18 Recommendation of the Magistrate Judge.

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

21 IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus.
22 (Doc. 1)

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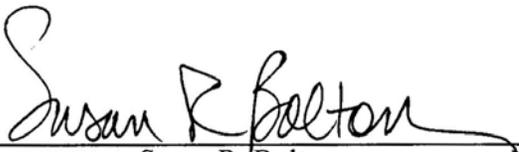
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1 IT IS FURTHER ORDERED denying a Certificate of Appealability as leave to
2 proceed *in forma pauperis* on appeal because dismissal of the Petitioner is justified by a
3 plain procedural bar and jurists of reason would not find the procedural ruling debatable.
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5 Dated this 18th day of December, 2014.
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11 Susan R. Bolton
12 United States District Judge
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