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2 NOT FOR PUBLICATION  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 Charlotte Evyonne Wells,  
10 Petitioner,  
11 vs.  
12 Charles L. Ryan, *et al.*,  
13 Respondents.  
14

No. CV 14-02048-PHX-JJT (BSB)

**ORDER**

15 At issue is the Report and Recommendation (“R&R”) (Doc. 23) submitted by  
16 United States Magistrate Judge Bridget Bade recommending that the Court deny the  
17 Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254 (Doc. 1), to which  
18 Petitioner Charlotte Evyonne Wells has filed an Objection (Doc. 24). Also at issue are the  
19 two Motions for Status (Docs. 25 and 26) filed by Petitioner.

20 In the 35-page R&R, Judge Bade thoroughly analyzed and addressed the many  
21 grounds for relief Petitioner had raised in her Petition, and provided ample support for  
22 her recommendation that this Court deny and dismiss the Petition. Because the Court will  
23 adopt the R&R in its entirety, including Judge Bade’s underlying reasoning, it will  
24 recount only in summary form the reasoning for the recommendation and this Court’s  
25 conclusions.

26 The R&R demonstrates, despite Respondents’ arguments to the contrary, that the  
27 Petition was timely under the limitations period set forth in 28 U.S.C. Section 2244(d)(1),  
28 once the statutory tolling was properly applied to account for the time that Petitioner’s

1 application for state post-conviction review was pending. However, Judge Bade's  
2 analysis also demonstrated that 10 of the 15 discreet grounds for relief that Petitioner  
3 raised in her Petition are procedurally barred, either because Petitioner failed to present  
4 her federal claims to the Arizona court, and returning there now would be futile because  
5 the claims are now waived, or because Petitioner did raise the claims in state court, which  
6 found them barred on state procedural grounds at the time.

7 The R&R concluded, and recommended, that five of Petitioner's grounds were not  
8 procedurally barred, including a group of four related assertions of ineffective assistance  
9 of counsel at the plea negotiation stage, and a claim that the search of Petitioner's car  
10 violated her Fourth Amendment Rights. Judge Bade recommended that Petitioner's  
11 Fourth Amendment ground is beyond *habeas* review pursuant to *Moorman v. Schriro*,  
12 426 F.3d 1044, 1053 (9<sup>th</sup> Cir. 2005), because it was fully litigated in state court. This is  
13 correct. The record demonstrates full and fair litigation of the search issue both in the  
14 pre-trial motion and hearing phase, and again on direct review.

15 Judge Bade also recommended that Petitioner is not entitled to relief on her  
16 remaining claims that urge ineffective assistance of trial counsel during the plea  
17 negotiation phase. She so recommends because Petitioner has failed to show that the state  
18 court's resolution of those claims was based on an unreasonable determination of facts, or  
19 that such resolution was either contrary to or an unreasonable application of controlling  
20 Supreme Court precedent. This recommendation is again correct. The record upon  
21 *habeas* review provides ample support to meet this deferential standard.

22 Petitioner's objections to the above recommendations are convoluted and hard to  
23 follow. To the extent the Court can understand them, Petitioner focuses on arguments that  
24 are no longer at issue, including points on which the Court agrees with her position. For  
25 example, Petitioner devotes nearly a third of her Objection to the argument that her  
26 Petition should be deemed timely filed, and that any lateness was due to her receiving  
27 poor advice from a prison paralegal. (Doc. 24 at pp. 4-21) But Judge Bade  
28 recommended, and this Court agrees, that the Petition was timely filed after exclusions

1 for statutory tolling. This point is therefore moot. Petitioner also dedicates much prose to  
2 making arguments on the merits that there was a lack of proof of her guilt, and other  
3 points that likewise do not go to the issues before this Court in the context of a petition  
4 for habeas review.<sup>1</sup> In short, Petitioner fails to specifically address or dispute with legal  
5 argument or the application of the correct standard any of Judge Bade’s recommendations  
6 or conclusions. Instead, the Objections appear to simply restate factual arguments  
7 Petitioner has previously made

8 After a thorough review of the 48-page Objection by Petitioner, this Court finds no  
9 arguments actually challenging the legal conclusions or findings supporting the  
10 recommendation to deny the Petition for writ. While Petitioner repeats her version of her  
11 conversations with trial counsel, Mr. Biller, that is beside the point. The state trial judge  
12 has already made a determination of credibility and findings based on that determination,  
13 which, for the reasons Judge Bade has set forth in detail in the R&R, this Court will not  
14 disturb under law.

15 Additionally, Petitioner substitutes in lieu of factual assertions or legal argument  
16 her repeated contention that she “believes” that the courts would find in her favor on  
17 these matters. This Court does not doubt Petitioner’s belief. But that is not the standard.  
18 Petitioner must address the relevant standards applicable to the review of her claims upon  
19 *habeas* review rather than her beliefs or conclusory statements that she should prevail  
20 without any relevant factual or legal argument.

21 **IT IS ORDERED:**

- 22 1) adopting in whole the Report and Recommendation submitted by Judge  
23 Bade in this matter (Doc. 23);  
24 2) denying the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.  
25 Section 2254 (Doc. 1) and dismissing the matter;

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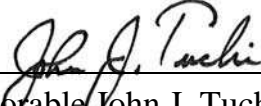
<sup>1</sup> Again by way of example, Petitioner argues that there was no proof presented  
that she was ever present for any drug sale, and that she never would have advised the  
police that the drugs found in her vehicle belonged to her daughter. (Doc 24 at p. 3).

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3) denying a certificate of appealability and leave to proceed *in forma pauperis* on appeal, because the Court finds that dismissal of the Petition is justified by a plain procedural bar, and reasonable jurists would not find the ruling debatable;

4) denying as moot Petitioner's Motions for Status (Docs. 25 and 26).

Dated this 27<sup>th</sup> day of January, 2016.

  
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Honorable John J. Tuchi  
United States District Judge