

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Alvin J. Robinson,

10 Petitioner,

11 v.

12 State of Arizona, et al.,

13 Respondents.  
14

No. CV-14-02152-PHX-SRB

**ORDER**

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16 Petitioner Alvin J. Robinson filed his Amended Petition Under 28 U.S.C. § 2254  
17 for Writ of Habeas Corpus by a Person in State Custody on November 17, 2014. He  
18 asserted two grounds for relief but only one survived screening. Petitioner alleges that he  
19 is “in custody in violation of the Constitution or laws or treaties of the United States”  
20 because the trial court did not give him credit for time served on supervised probation or  
21 in the county jail when it sentenced him to prison. In their answer Respondents assert  
22 that federal habeas corpus review is procedurally barred and, alternatively, that  
23 Petitioner’s claim is not cognizable on federal habeas corpus review. Petitioner replied  
24 arguing that he properly exhausted his remedies in state court and that he had presented a  
25 federal claim to the state court.

26 The Magistrate Judge issued her Report and Recommendation on June 8, 2015,  
27 recommending that the Petition for Writ of Habeas Corpus be denied because Petitioner  
28 had not presented a claim cognizable on federal habeas corpus review and, alternatively,

1 because federal habeas corpus review is procedurally barred and Petitioner failed to  
2 establish a basis to overcome that bar. Petitioner filed timely objections on June 26,  
3 2015.

4 In his objections Petitioner does not address either of the grounds set out in the  
5 Report and Recommendation as the basis for denial of his petition. He argues that  
6 because he was sentenced over 12 years ago he is automatically time barred from filing a  
7 Petition for Post-Conviction Relief in state court and has no choice but to file in this  
8 court. He argues that the state and/or Respondents are trying to use this technicality to  
9 hinder him from receiving all the credit for time served that he should have received.  
10 Petitioner then explains why he believes he is entitled to additional time served credit.

11 The requirements for exhaustion and raising a federal claim on habeas review are  
12 not mere technicalities. As the Magistrate Judge noted in her Report and  
13 Recommendation, Petitioner has not sufficiently alleged a federal claim and, therefore,  
14 his claim as expressed in his Amended Petition is not cognizable on federal habeas  
15 corpus review. Even if Petitioner's statement that he was "in custody in violation of the  
16 constitution or laws or treaties of the United States" could adequately allege a violation of  
17 federal law, he is still procedurally barred because he did not present this federal claim to  
18 the Arizona Court of Appeals. The Magistrate Judge explained that even if one could  
19 conclude that Petitioner's general reference to the language of 28 U.S.C. § 2254 and his  
20 assertion that his custody is illegal and excessive sufficiently pled a federal claim, he is  
21 still procedurally barred because he did not present a federal claim to the state courts.  
22 The claim presented to the state court in Petitioner's February 10, 2014 letter did not cite  
23 any legal authority and only expressed his position that the time spent in the county jail as  
24 a condition of probation and the time spent on supervised probation should have been  
25 credited against his sentences of imprisonment. When he sought review of the trial  
26 court's denial of his request for additional credit in the Arizona Court of Appeals he  
27 again did not present a federal claim. He only argued generally again that he should have  
28 been given credit for time spent in the county jail and on supervised probation.

1 Petitioner's objections fail to address either of these procedural bars to the consideration  
2 of his habeas petition. He also never argues that he can establish any basis to overcome  
3 the procedural bar.

4 IT IS ORDERED overruling Petitioner's Objection to the Report and  
5 Recommendation of the Magistrate Judge. (Doc. 18)

6 IT IS FURTHER ORDERED adopting the Report and Recommendation of the  
7 Magistrate Judge as the Order of this Court. (Doc. 17)

8 IT IS FURTHER ORDERED that the Amended Petition for Writ of Habeas  
9 Corpus is denied. (Doc. 5)

10 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to  
11 proceed in forma pauperis on appeal because dismissal of the Petition is justified by a  
12 plain procedural bar and reasonable jurists would not find the procedural ruling  
13 debatable.

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15 Dated this 22nd day of July, 2015.

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Susan R. Bolton  
United States District Judge