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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 David Cramer,

10 Petitioner,

11 v.

12 State of Arizona, et al.,

13 Respondents.
14

No. CV-16-03522-PHX-JAT

ORDER

15 Pending before the Court is Petitioner's amended petition for writ of habeas
16 corpus ("Petition") stemming for two criminal convictions out of Maricopa County (CR
17 2012-005939 and CR 2012-139652). (Doc. 29 at 1-2). The Magistrate Judge to whom
18 this case was assigned issued a Report and Recommendation ("R&R") recommending
19 that this Court deny the Petition in this case. Specifically, the R&R concluded that the
20 Petition with respect to both cases was procedurally barred and Petitioner had not shown
21 cause or fundamental miscarriage of justice to overcome this procedural default. (Doc.
22 29 at 7-13). Additionally, the R&R concludes that as to case CR 2012-139652 the
23 Petition is untimely under the Anti-Terrorism and Effective Death Penalty Act's statute
24 of limitations. (Doc. 29 at 4-7). Petitioner filed objections to the R&R. Petitioner also
25 filed three motions which remain pending.

26 **I. Review of R&R**

27 This Court "may accept, reject, or modify, in whole or in part, the findings or
28 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). It is "clear that

1 the district judge must review the magistrate judge’s findings and recommendations *de*
2 *novo if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d
3 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in original); *Schmidt v. Johnstone*, 263
4 F.Supp.2d 1219, 1226 (D. Ariz. 2003) (“Following *Reyna-Tapia*, this Court concludes
5 that *de novo* review of factual and legal issues is required if objections are made, ‘but not
6 otherwise.’”). Because Petitioner filed objections (titled “Petitioners response to Judge
7 Bridget S. Bade recommendation to deny and/or dismiss (Doc. 10) (Doc.27) [This is an
8 admiralty or maritime claim within the meaning of Rule 9(h)]”), the Court will review the
9 conclusions in the R&R *de novo*.

10 **II. Procedural Bar**

11 The R&R concludes that all claims in Petitioner’s petition are barred because none
12 of them were presented to the Arizona Court of Appeals. (Doc. 29 at 10). Further,
13 Petitioner did not file a petition for post-conviction relief in either case. In his objections,
14 Petitioner argues that he did in fact file a direct appeal in both cases. (Doc. 30 at 1).
15 Nonetheless, the Court agrees with the R&R that the claims presented in the Petition in
16 this case were not presented to the Arizona Court of Appeals in either appeal.
17 Accordingly, this objection is overruled. Later in his objections, Petitioner denies having
18 appealed arguing “Plaintiff did not approach the Arizona Court of Appeals simply due to
19 its lack of jurisdiction....” (Doc. 30 at 3). Because Petitioner actually appealed, the
20 Court finds this objection to be unsupported by the facts.

21 Next the R&R concludes that because these claims were not presented to the state
22 court, and now any presentment would be untimely, the claims are procedurally defaulted
23 and barred from habeas review unless Petitioner can show cause and prejudice or a
24 fundamental miscarriage of justice. (Doc. 29 at 11). The R&R concludes the Petitioner
25 cannot show either exception to the procedural bar applies in this case.

26 While the Petitioner filed objections globally to the R&R, none of those objections
27 are directly on this issue.¹ Moreover, considering this case *de novo*, the Court agrees

28 ¹ For example, Petitioner states, “Succinctly put, the issues stated in this writ

1 with the R&R that Petitioner’s claims are procedurally barred.

2 Additionally, the Court agrees with the R&R that Petitioner has not shown a
3 fundamental miscarriage of justice, or cause, to overcome this procedural bar. (Doc. 29
4 at 11-13). Nothing in Petitioner’s objections changes this conclusion. Accordingly, the
5 claims in the Petition in this case are procedurally defaulted and the Court will deny the
6 Petition on this basis.²

7 **III. Other Pending Motions**

8 Three other motions are pending before this Court: 1) Petitioner’s motion to seal
9 this case; 2) Petitioner’s motion to stay this case; and 3) Petitioner’s motion for summary
10 judgment. The Court will address each motion in turn.

11 Citing at least eight Bible passages and 15 Federal Rules of Civil Procedure,
12 Petitioner makes a conclusory argument that this case should be sealed because it is a
13 private matter. (Doc. 15). Such argument fails to meet the test for filing under seal and
14 will be denied. *See generally Kamakana v. City and County of Honolulu*, 447 F.3d 1172,
15 1179-80 (9th Cir. 2006).

16 Next, Petitioner seeks to stay “enforcement of the judgments” against him in his
17 state court criminal cases under Federal Rules of Civil Procedure 50, 52, 59, and 60.
18 (Doc. 27). This Court cannot use the Federal Rules to stay a state court judgment. *See*
19 *generally Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987); *Middlesex County Ethics*
20 *Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982). Accordingly, the stay is
21 denied.

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regard jurisdiction; illegal imprisonment, unlawful prosecution, and misrepresentation
to/by a government agency through components of illegal construction of a contract with
market value governed under contract law founded in the uniform commercial code and
'not' statutory law – However, the crimes committed to accomplish this illegality is
found in statutory law and must be addressed in the interest of justice and
constitutionality; unfortunately this is by no means addressed by this Court (a unique
insight into the justice system)....” (Doc. 30 at 4-5).

² Alternatively, as to the claims arise from CR 2012-139652, the Court agrees
with the R&R that they are untimely and not subject to equitable tolling. (Doc. 29 at 4-
7). Petitioner’s objections (Doc. 30 at 2; *see also generally id.* at 1-7) do not change this
conclusion.

1 Finally, because this Order resolves Petitioner's amended petition on the merits,
2 summary judgment would be inappropriate. Thus, this motion (Doc. 33) is also denied.

3 **IV. Conclusion**

4 Based on the foregoing,

5 **IT IS ORDERED** that the motion to seal (Doc. 15) is denied;

6 **IT IS FURTHER ORDERED** that the motion to stay (Doc. 27) is denied;

7 **IT IS FURTHER ORDERED** that the motion for summary judgment (Doc. 33)
8 is denied;

9 **IT IS FURTHER ORDERED** that the Report and Recommendation (Doc. 29) is
10 accepted and adopted; the objections (Doc. 30) are overruled; the amended petition (Doc.
11 10) is denied and dismissed with prejudice and the Clerk of the Court shall enter
12 judgment accordingly.

13 **IT IS FINALLY ORDERED** that, in the event Petitioner files an appeal, the
14 Court denies issuance of a certificate of appealability because dismissal of the petition is
15 based on a plain procedural bar and jurists of reason would not find this Court's
16 procedural ruling debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

17 Dated this 22nd day of May, 2017.

