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NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jose Manuel Pinzon,
Petitioner,
v.
Charles L Ryan, et al.,
Respondents.

No. CV-14-08244-PCT-DJH
ORDER

This matter is before the Court on *pro se* Petitioner’s Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 4) and the Report and Recommendation (“R & R”) of United States Magistrate Judge Bridget S. Bade (Doc. 12). The R & R includes an accurate and complete recitation of the necessary factual and procedural background. (Doc. 12 at 1:21-5:12). The R & R also correctly sets forth the legal principles governing the threshold issue of whether a petitioner has exhausted available state court remedies. (*Id.* at 5:13-7:26). After a thorough and sound analysis, the Magistrate Judge found that Petitioner’s claims were procedurally barred, and that Petitioner did not establish a basis to overcome that bar. The Magistrate Judge thus recommends denial of the Petition. Petitioner filed timely objections (Doc. 13). The Court now rules as follows.
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1 **I. Standard of Review**

2 The Court must “make a de novo determination of those portions of the report or
3 specified proposed findings or recommendations to which” a Petitioner objects. 28
4 U.S.C. § 636(b)(1)(C); *see also* Fed.R.Civ.P. 72(b)(3) (“The district judge must
5 determine de novo any part of the magistrate judge’s disposition that has been properly
6 objected to.”); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (same).
7 Conversely, the relevant provision of the Federal Magistrates Act, 28 U.S.C. §
8 636(b)(1)(C), “does *not* on its face *require any review at all* . . . of any issue that is not
9 the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1989) (emphasis added);
10 *see also* *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005) (“Of course, de novo
11 review of a R & R is only required when an objection is made to the R & R, [*Reyna–*
12 *Tapia*,] 328 F.3d [at] 1121 . . . (“Neither the Constitution nor the [Federal Magistrates
13 Act] requires a district judge to review, de novo, findings and recommendations that the
14 parties themselves accept as correct”)[.]”) Likewise, it is well-settled that “failure to
15 object to a magistrate judge's factual findings waives the right to challenge those
16 findings[.]” *Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir. 2015) (quoting *Miranda*
17 *v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (internal quotation marks omitted)
18 (footnote omitted)).

19 **II. Analysis**

20 Although designated as “objections,” Petitioner is not actually objecting to any of
21 the R & R’s factual findings or legal conclusions. Thus, as to the factual findings,
22 Petitioner has waived any objection thereto. *See Bastidas*, 791 F.3d at 1159 (citations
23 omitted). Petitioner’s objections are conspicuously silent on the determinative issue of
24 issue of procedural default. In fact, it is readily apparent that, with one exception which
25 the Court will address next, Petitioner is simply reasserting most of the grounds for relief
26 found in his amended petition. Further, instead of objecting to any aspect of the R & R,
27 Petitioner is seeking to have this Court address the merits, despite the Magistrate Judge’s
28 findings of procedural default and failure to overcome that bar. Hence, because

1 Petitioner makes no objections at all to the R & R, this Court is not required to review the
2 R & R. Nonetheless, the Court has reviewed the R & R and agrees with its sounding
3 reasoning, findings and recommendations. The Court will, therefore, accept the R & R
4 and deny the Petition. *See* 28 U.S.C. § 636(b)(1)(C) (“A judge of the court may accept,
5 reject, or modify, in whole or in part, the findings or recommendations made by the
6 magistrate judge.”); Fed.R.Civ.P. 72(b)(3) (same).

7 The Court recognizes, as just alluded to, that Petitioner’s objections seem to
8 include a new claim for habeas relief. Petitioner contends that his “pretrial/trial counsel .
9 . . fail[ed] to provide him with a reasonable assessment of the probable outcome of his
10 trial[.]” (Doc. 13 at 3). Speculating and with the advantage of hindsight, Petitioner
11 further claims that had his counsel provided him with the foregoing, Petitioner “would
12 have accepted the State’s plea agreement.” (*Id.*) (citation omitted). Petitioner’s amended
13 petition does include several claims of ineffective assistance of counsel, but not this
14 particular one. This new claim for habeas relief was, understandably, not addressed in
15 the R & R. Because Petitioner is improperly raising this new unexhausted claim in his
16 objections, the Court gives no credence to such a claim and adheres to its view that the
17 Magistrate Judge correctly recommended denial of this amended petition.

18 **III. Conclusion**

19 Accordingly,

20 **IT IS HEREBY ORDERED** that that Magistrate Judge Bade’s R & R (Doc. 12)
21 is **accepted and adopted** as an Order of this Court.

22 **IT IS FURTHER ORDERED** that the Amended Petition for Writ of Habeas
23 Corpus (Doc. 4) is **DENIED** and **dismissed with prejudice**.

24 **IT IS FURTHER ORDERED** that a Certificate of Appealability and leave to
25 proceed *in forma pauperis* are **DENIED** because the dismissal of the Amended Petition
26 is justified by a plain procedural bar and reasonable jurists could not find the procedural
27 ruling debatable.

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IT IS FINALLY ORDERED that the Clerk of Court shall terminate this action and enter judgment accordingly.

Dated this 20th day of June, 2016.



Honorable Diane J. Humetewa
United States District Judge