

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Richard Thomas Kuczynski,	)	No. CV 06-460-TUC-FRZ (HCE)
Petitioner	)	<b>ORDER</b>
vs.	)	
Dora B. Schriro; et. al.,	)	
Respondents.	)	

---

Pending before the Court is Petitioner Richard Thomas Kuczynski’s Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. §2254, presenting three grounds alleging violations of his Fifth, Sixth and Eighth Amendment rights.

This matter was referred to the United States Magistrate Judge for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2, Rules of Practice of the United States District Court for the District of Arizona.

Magistrate Judge Hector C. Estrada issued his Report and Recommendation, recommending that the District Court, after its independent review of the record, dismiss this action in its entirety, based on Petitioner’s failure to fairly and properly present his three habeas claims for relief to the state court, which are now procedurally barred from review.

The Report and Recommendation provides an in-depth analysis of the procedural history and discussion of the facts and issues presented.


1 The Court, having made an independent review of the record herein, including  
2 Petitioner's objections, finds that Plaintiff failed to properly exhaust the grounds for habeas  
3 relief raised in his federal petition and that Petitioner is barred, pursuant to Rule 32.2(a) of  
4 the Arizona Rules of Criminal Procedure, from further review. Accordingly, based on  
5 Petitioner's failure to meet the requirements of exhaustion and based on procedural default,  
6 as set forth in the Report and Recommendation, the Court shall adopt the Report and  
7 Recommendation of Magistrate Judge Estrada as the findings of fact and conclusions of law  
8 of this Court.

9 Based on the foregoing,

10 **IT IS ORDERED** that the Report and Recommendation [Doc. #26] of Magistrate  
11 Judge Estrada is hereby **ACCEPTED** and **ADOPTED** as the findings of fact and  
12 conclusions of law by this Court;

13 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus is  
14 **DENIED** and that this action is hereby dismissed with prejudice. Judgment shall be entered  
15 accordingly.

16  
17 DATED this 29<sup>th</sup> day of May, 2009.

18  
19   
20 FRANK R. ZAPATA  
21 United States District Judge  
22  
23  
24  
25  
26  
27  
28