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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Aminadab Orduno,

Petitioner,

vs.

Dora B. Schriro, et al.,

Respondents.

No. CV 08-526-TUC-FRZ

ORDER

Before the Court for consideration is the Report and Recommendation of Magistrate Judge Jacqueline M. Rateau, recommending that the Court dismiss the Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, filed by Petitioner Aminadab Orduno. Petitioner, who is represented by counsel.

Petitioner is currently serving a 27 year sentence in the custody of the Arizona Department of Corrections. Following a jury trial, Petitioner was found guilty of three counts of kidnapping, three counts of aggravated assault with a deadly weapon, kidnapping a minor under 15 years of age, and first-degree burglary. The state trial court sentenced Petitioner to a presumptive prison term of 17 years for kidnapping a minor, to be followed by concurrent presumptive terms on the other charges, the longest being 10.5 years, for a total sentence term of 27 years.

The Amended Petition raises five grounds for relief. Ground One asserts that Petitioner’s trial counsel was ineffective because he failed to secure the beneficial plea offer, failed to meet with Petitioner regularly before trial, failed to obtain a psychological

1 examination and present mitigation evidence, and failed to finalize an agreement with the
2 state whereby Petitioner’s sentence would be reduced in return for his cooperation in the
3 prosecution of his co-defendant. In Ground Two, Petitioner argues that the trial court’s
4 rejection of the plea agreement violated his right to due process. Ground Three asserts that
5 the “improper procedures surrounding plea negotiations . . . created sentences that were
6 impermissibly disparate between” Petitioner and the co-defendant. Ground Four alleges that
7 Petitioner’s rights under the Fifth Amendment were violated because Arizona law
8 impermissibly places the burden of proof on a defendant to prove duress. In Ground Five,
9 Petitioner argues that the reasonable doubt instruction given in his case unconstitutionally
10 diminished the state’s burden of proof.

11 This matter was referred to Magistrate Judge Rateau pursuant to the provisions of 28
12 U.S.C. § 636(b), Rule 72, Fed.R.Civ.P., and Local Rules 72.1 and 72.2 of the Rules of
13 Practice of the United States District Court for the District of Arizona, for further
14 proceedings and report and recommendation.

15 Magistrate Judge Rateau issued her Report and Recommendation on January 14,
16 2013, recommending that the Court, after its independent review of the record, enter an
17 order denying the five separate claims raised and dismiss the Amended Petition for Writ of
18 Habeas Corpus. Magistrate Judge Rateau specifically found that Grounds Two and Three
19 were not properly exhausted in the state courts and are now procedurally barred.
20 Notwithstanding the finding that Ground Four was not properly exhausted, the Report and
21 Recommendation addresses and recommends the dismissal of Ground Four, as well as
22 Grounds One and Five, on the merits.

23 The Report and Recommendation sets forth a detailed factual and procedural history
24 of the underlying state court criminal and post-conviction proceedings and a thorough
25 procedural and legal analysis addressing Petitioner’s claims for relief.

26 The parties were advised that they may serve and file written objections pursuant to
27 Rule 72(B)(2), within fourteen days of being served with a copy of the Report and
28 Recommendation, and that if objections were not timely filed, they may be deemed waived.

1 Following the requests for and approval of extensions, counsel for Petitioner filed
2 Objections to Magistrate Report and Recommendation on August 1, 2013, requesting that
3 the Court reject the recommendation that the Amended Petition be denied, arguing that the
4 Magistrate Judge abused her discretion based on her findings as to Grounds One through
5 Four. There is no objection to the Report and Recommendation on Ground Five.

6 After consideration of the matters presented, and an independent review of the record
7 herein, the Court finds that the Report and Recommendation shall be adopted, thereby
8 denying habeas relief and dismissing the Amended Petition for Writ of Habeas Corpus as
9 recommended. Accordingly,

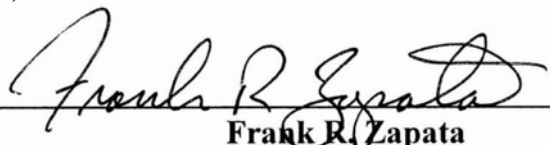
10 IT IS ORDERED that the Report and Recommendation (Doc. 18) is hereby
11 ACCEPTED and ADOPTED as the findings of fact and conclusions of law by this Court;

12 IT IS FURTHER ORDERED that the Amended Petition for Writ of Habeas Corpus
13 Pursuant to 28 U.S.C. § 2254 (Doc. 3) is hereby DENIED and this action is DISMISSED;

14 IT IS FURTHER ORDERED that Judgment be entered accordingly.

15 IT IS FURTHER ORDERED that, if Petitioner appeals the denial of his petition for
16 habeas relief, any request for certificate of appealability shall be denied based on the Court's
17 determination of the claims presented, and based on the Court's finding that Petitioner has
18 failed to make the requisite substantial showing of a denial of a constitutional right on the
19 grounds presented. See 28. U.S.C. § 2253(c).

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21 DATED this 10th day of September, 2013.

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24 **Frank R. Zapata**
25 **Senior United States District Judge**
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