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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert Gonzalez,)	No. CV 08-658-TUC-FRZ (DTF)
Petitioner,)	ORDER
vs.)	
Charles Ryan, et al.,)	
Respondents.)	

Before the Court for consideration is the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner Robert Gonzalez, through the representation of counsel, and the Report and Recommendation of the Magistrate Judge, recommending the dismissal of the Petition.

Petitioner, convicted in Pima County Superior Court of two counts of attempted first-degree murder, four counts of aggravated assault, two counts of endangerment, and one count of disorderly conduct, following two separate trials on severed counts, was sentenced in state court to concurrent and consecutive sentences totaling a term of 36-years of imprisonment.

The Petition for Writ of Habeas Corpus sets forth 17 claims for relief.

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

1 Magistrate Judge Ferraro issued his Report and Recommendation, recommending that
2 the Court enter an order dismissing the Petition for Writ of Habeas based on his findings that
3 “Claims 1, 4, 5, 6 (as to [precluded witness] Duran), 10, 12, 14, 15(e), (h) and (i), 16(A) (4),
4 (7)(a) and (8), 17(A), and 17(B)(1) do not warrant relief under the AEDPA¹ and should be
5 dismissed on the merits. [And further] Petitioner’s request for discovery and an evidentiary
6 hearing as to Claims 4 and 16(A)(7)(a) ... be denied.”

7 The Magistrate Judge further recommends dismissal of Claims 2, 3, 6 (as to precluded
8 witnesses Escusa and Canez), 7, 8, 9, 11, 13, 15 (a) to (d), (f) and (g), 16(A)(1), (2), (3), (5),
9 (6) and (7)(b), 16(B), 17(B)(2), and 17(C), on the basis the claims are procedurally defaulted.

10 The Report and Recommendation sets forth the factual and procedural history of
11 Petitioner’s state court proceedings and convictions at issue and provides a thorough analysis
12 of the claims and legal standards at issue.

13 Petitioner filed an exhaustive Objection to the Report and Recommendation of
14 Magistrate Ferraro pursuant to 28 U.S.C. §636(b), challenging the substantive and procedural
15 findings set forth therein.

16 The Court finds, after consideration of the matters presented and an independent
17 review of the record herein, including Petitioner’s detailed Objection to the Report and
18 Recommendation, Respondents’ response and Petitioner’s reply thereto, that the Petition
19 should be denied and this action be dismissed in accordance with the recommendations set
20 forth therein.

21 Petitioner’s assertion that he “is aware that many times the District Court does in fact
22 adopt the recommendations of the Magistrate notwithstanding the clear and cogent objections
23 made by Petitioner on such Habeas Corpus petitions” is unfounded and disingenuous.
24 Notwithstanding the foregoing, Petitioner’s request for a certificate of appealability will be
25 granted.

26
27 ¹Petitioner’s habeas claims are governed by the applicable provisions of the
28 Antiterrorism and Effective Death Penalty Act (AEDPA). *See Lindh v. Murphy*, 521 U.S.
320, 336, 117 S.Ct. 2059, 2068 (1997).

1 A court “must resolve doubts about the propriety of a COA in the petitioner’s favor.”
2 *Jennings v. Woodford*, 290 F.3d 1006, 1010 (9th Cir. 2002)(citing *Lambright v. Stewart*, 220
3 F.3d 1022, 1025 (9th Cir. 2000) (en banc). The Court “may issue a COA for any issue with
4 respect to which petitioner makes a “substantial showing of the denial of a constitutional
5 right.” *Id.*; 28 U.S.C. § 2253(c)(2). This showing can be established by demonstrating that
6 the issues are “adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*,
7 529 U.S. 473, 484, S.Ct. (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, S.Ct.
8 (1983)). The Court finds that the issues presented advance the requisite showing for a COA
9 to issue. Accordingly,

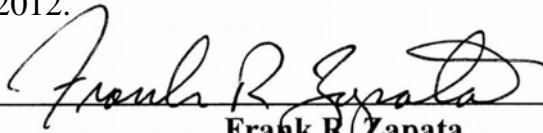
10 IT IS ORDERED that Magistrate Judge Ferraro’s Report and Recommendation [Doc.
11 22] is hereby ACCEPTED AND ADOPTED as the findings of fact and conclusions of law
12 by this Court;

13 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is DENIED
14 and this action is hereby DISMISSED;

15 IT IS FURTHER ORDERED that a Certificate of Appealability shall issue;

16 IT IS FURTHER ORDERED that judgment be entered accordingly.

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18 DATED this 19th day of June, 2012.

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21 **Frank R. Zapata**
22 **Senior United States District Judge**
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