

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**

Stanley Wade Starr,

Petitioner,

v.

Antonio Baca, et al.,

Respondents.

No. CV-11-00395-TUC-JGZ (JR)

ORDER

On August 23, 2013, Magistrate Judge Jacqueline M. Rateau issued a Report and Recommendation (Doc. 13) in which she recommended dismissing Petitioner's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody. (Doc. 1.) The R&R provided that any party could file written objections within fourteen (14) days after being served with a copy of the R&R. On August 29, 2013, Respondents filed a "Limited Objection to Report and Recommendation" (Doc. 14) requesting that the Court adopt all but one paragraph of the R&R. (Doc. 14, p. 1.) Respondents' objection states that "[a]lthough the Magistrate Judge correctly analyzes Petitioner's claims, the first paragraph on page 6 lists claims that do not appear in his Petition for Writ of Habeas Corpus." (*Id.*) Respondents' limited objection requests that this Court correct page six and thereafter dismiss the Petition with prejudice.

After an independent review of the record, the Court adopts the R&R, except as indicated in this Order.

STANDARD OF REVIEW

The Court reviews de novo the objected-to portions of the R&R. 28 U.S.C. §

1 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to
2 portions of the R&R. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999);
3 *see also Conley v. Crabtree*, 14 F.Supp.2d 1203, 1204 (D. Or. 1998).

4 **PROCEDURAL AND FACTURAL BACKGROUND**

5 Petitioner’s Petition raises six claims for relief and contains one subheading
6 entitled “5.2 Ineffective Assistance of Counsel” that itself lists six allegations of
7 ineffectiveness.¹ (Doc. 1.) In Claim One, Petitioner argues that the prosecutor violated
8 his First Amendment rights to free speech and to peaceably assemble by selectively
9 prosecuting him due to his affiliation with the “constitutionalists.” His claim also alleges
10 grand jury manipulation due to this same alleged “constitutionalist” bias. Claim Two
11 alleges that the prosecutor violated his Fourth Amendment right against unreasonable
12 searches and seizures by filing an insufficient indictment without probable cause because
13 the prosecutor withheld exculpatory evidence regarding “Notices of Invalid Liens.” In
14 Claim Three, Petitioner argues that the state violated his Fifth Amendment Double
15 Jeopardy rights by pursuing both criminal and civil sanctions against him. Claim Four
16 alleges that the Prosecutor violated Petitioner’s Sixth Amendment rights to a speedy, fair,
17 and public trial by denying him an informed jury and by failing to disclose exculpatory
18 evidence.² In Claim Five, Petitioner argues that the trial court violated his Eighth
19 Amendment right to be free from cruel and unusual punishment by imposing consecutive
20 sentences. Claim Six re-alleges Petitioner’s claims of judicial and prosecutorial
21 misconduct as violations of his Fourteenth Amendment rights to due process and equal
22 protection. In particular, Petitioner raises his denial of a jury trial, prosecutorial
23 misconduct, and an alleged judicial conflict of interest and prejudice. Finally,
24 Petitioner’s subheading claim “5.2 Ineffective Assistance of Counsel” lists: (a) failure to
25 investigate Notice of Invalid Lien; (b) failure to question indictment; (c) failure to object

26
27 ¹ Paragraph one on page six, lines 1-12, of the R&R incorrectly lists Petitioner’s
claims and is replaced by the findings of this Order.

28 ² Petitioner fails to fully articulate this argument. Rather, he puts his argument in
in parentheticals, *i.e.*, (false document).

1 to misleading evidence; (d) failure to address conspiracy charge; (e) failure to call any
2 witnesses on Petitioner's behalf; (f) failure to object to excessive sentencing; and (g)
3 failure of appellate counsel to appeal appealable issues.

4 **DISCUSSION**

5 The R&R addressed Petitioner's six claims as well as his "5.2 Ineffective
6 Assistance of Counsel" allegations, and no objections to the R&R's legal findings were
7 filed. Reviewing for clear error, this Court finds none. Accordingly,

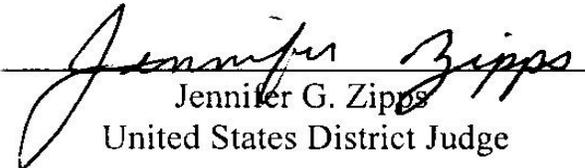
8 **IT IS HEREBY ORDERED** that:

9 1. The Report and Recommendation (Doc. 13) is ACCEPTED AND ADOPTED as
10 the findings of fact and conclusions of law of this Court, with the modifications discussed
11 in this Order;

12 2. Petitioner's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a
13 Person in State Custody (Doc. 1) is DISMISSED WITH PREJUDICE; and

14 3. The Clerk of the Court shall enter judgment in this matter, and close its file.

15 Dated this 4th day of November, 2013.

16
17
18 
19 Jennifer G. Zipp
20 United States District Judge
21
22
23
24
25
26
27
28