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

Wenceslao Cruz,

Petitioner,

v.

Charles L Ryan, et al.,

Respondents.

No. CV-12-00487-TUC-RCC (LAB)

**ORDER**

Before the Court is the September 12, 2013, Report and Recommendation (R&R) from Magistrate Judge Leslie Bowman (Doc. 10) recommending that this Court deny Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1). Petitioner claims (1) the trial court erred when it denied his motion to dismiss the charges; (2) his right to a speedy trial was violated; (3) trial counsel was ineffective for failing to introduce the 911 tapes into evidence; and (4) the trial court's statement that the prosecutor should "drop the case and refile" was prosecutorial and judicial misconduct. (Doc. 1, 1-1).

Petitioner filed his objections to the R&R (Doc. 11) on October 2, 2013. For the following reasons, this court will adopt the R&R.

**I. BACKGROUND**

The factual and procedural background in this case is thoroughly detailed in Magistrate Judge Bowman's R&R (Doc. 10). This Court fully incorporates by reference the Summary section of the R&R into this Order.

1     **II.     LEGAL STANDARD**

2             The duties of the district court in connection with a R&R are set forth in Rule 72  
3 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court  
4 may “accept, reject, or modify the recommended disposition; receive further evidence; or  
5 return the matter to the magistrate judge with instructions.” Fed.R.Civ.P. 72(b)(3); 28  
6 U.S.C. § 636(b)(1). The Court will not disturb a Magistrate Judge’s Order unless her  
7 factual findings are clearly erroneous or her legal conclusions are contrary to law. 28  
8 U.S.C. § 636(b)(1)(A). “[T]he magistrate judge’s decision ... is entitled to great deference  
9 by the district court.” *United States v. Abonce-Barrera*, 257 F.3d 959, 969 (9th Cir.  
10 2001). Where the parties object to a R&R, “[a] judge of the [district] court shall make a  
11 de novo determination of those portions of the [R&R] to which objection is made.” 28  
12 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

13     **III.     DISCUSSION**

14             Magistrate Judge Bowman issued an R&R recommending that this Court enter an  
15 order denying the petition because the trial court’s denial of Petitioner’s motion to  
16 dismiss the charges did not violation due process, and Petitioner’s other claims are  
17 procedurally defaulted.

18             Citing Arizona Rule of Criminal Procedure 32.2 and *Franklin v. Johnson*, 290  
19 F.3d 1223, 1230 (9th Cir. 2002), Judge Bowman found that claims 2 and 4 are  
20 procedurally defaulted because they were not presented to the Arizona Court of Appeals,  
21 and claim 3 is defaulted because Petitioner failed to raise it in a Rule 32 post-conviction  
22 relief petition. Judge Bowman further noted that Petitioner failed to argue that his default  
23 should be excused or that a fundamental miscarriage of justice would occur if the Court  
24 refuses to hear his claims.

25             Judge Bowman also found that claim 1 should be denied because there was no  
26 actual prejudice when the state refiled charges against Petitioner, thus the Due Process  
27 Clause was not violated when the trial court denied Petitioner’s motion to dismiss. Judge  
28 Bowman further found the trial court did not violate state law when it allowed the state to

1 dismiss the charges without prejudice.

2 In his objections to the R&R, Petitioner states that he “objects to all adverse  
3 ruling” in the R&R. (Doc. 11 at 2). Petitioner presents no additional arguments in support  
4 of this conclusory statement. Petitioner does state that he is currently seeking Rule 32  
5 post conviction relief at the state level, and therefore requests this Court “suspend the  
6 Writ of Habeas Corpus until the petitioner has exhausted all remedies.” (*Id.*).

7 As Petitioner has not presented any specific arguments opposing the R&R (other  
8 than noting that he has filed a Rule 32 petition), the Court declines to reexamine each of  
9 Judge Bowman’s findings of fact and conclusions of law. *See Abonce-Barrera*, 257 F.3d  
10 at 969 (the magistrate judge’s decision is entitled to great deference). The Court further  
11 declines to issue a stay of Petitioner’s habeas proceedings.

12 Accordingly,

13 **IT IS ORDERED** that Magistrate Judge Bowman’s Report and Recommendation  
14 (Doc. 10) is hereby ACCEPTED and ADOPTED as the findings of fact and conclusions  
15 of law by this Court.

16 **IT IS FURTHER ORDERED** Petitioner’s Petition for Writ of Habeas Corpus  
17 (Doc. 1) is DENIED. The Clerk shall close its file on this matter.

18 Dated this 11th day of December, 2013.

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24 Raner C. Collins  
25 Chief United States District Judge  
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