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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Richard Charles Tuccio,)	
)	CV-12-565-TUC-DCB
Petitioner,)	
v.)	
)	
Charles L. Ryan, et al.,)	ORDER
)	
Respondents.)	
)	
_____)	

This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b) and the local rules of practice of this Court for a Report and Recommendation (R&R) on the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Before the Court is the Magistrate Judge’s Report and Recommendation, which recommends that the Petition be denied and dismissed. The Petitioner filed Objections to the Report and Recommendation and the Respondents filed a Response to the Objections.

PETITIONER’S OBJECTIONS

Petitioner’s objections, as follows:

Petitioner claims that the Recommendation of the Magistrate Judge that petitioner failed to argue for the first time that his attorney failed to conduct adequate investigation to advise and assist him in making an informed decision on the plea offer versus going to trial in his PCR is not correct...Petitioner claims that claim 3 is not procedurally defaulted in this case.

1 (Objection at 6-7.) In addition, Petitioner claims that the Magistrate
2 Judge committed error in recommending that claims (1), (2) and (4) may
3 be dismissed on their merits.¹ (Objection at 8.) His reasoning is that
4 in this case, his attorney was ineffective "because of his acts that were
5 inconsistent with his duties of loyalty to petitioner." (Objection at
6 9.)

7 STANDARD OF REVIEW

8 When objection is made to the findings and recommendation of a
9 magistrate judge, the district court must conduct a de novo review.
10 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

11 DISCUSSION

12 Petitioner was convicted by a jury in Pima County Superior Court,
13 case #CR 2009-1004- 001, of Kidnapping-Domestic Violence, Sexual Assault,
14 and Burglary, and was sentenced to multiple terms of imprisonment, the
15 longest of which is 10.5-years. Petitioner raised four grounds for
16 relief: (1) Petitioner's trial counsel was ineffective in violation of
17 the Sixth Amendment;(2) The trial court erred by precluding testimony
18 that was relevant and probative toward Petitioner's defense, in violation
19 of the Sixth and Fourteenth Amendments; (3) Petitioner's Sixth Amendment
20 rights were violated when trial counsel failed to inform him of a plea
21 deal and when the trial court abused its discretion by denying
22 Petitioner's request for a hearing on the issue of ineffective assistance
23 of counsel; and (4) Petitioner's appellate counsel was ineffective in
24 violation of the Sixth Amendment.

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26 ¹The Respondent did not testify at trial, consequently his version
27 of the factual basis is not part of the record before the Court. *Cullen*
28 *v. Pinholster*, 131 S.Ct. 1388, 1398 (2011).

1 Respondents, in a thorough and detailed review of Petitioner's
2 conviction, appeal and post-conviction litigation, argued procedural
3 default, claims not cognizable for federal habeas relief, as well as
4 dismissal on the merits. (Docs. 12-15) In addition, the Magistrate
5 Judge's Report and Recommendation is thorough and well-reasoned. (Doc.
6 19.)

7 Petitioner's Objections do not highlight any new or pertinent law
8 or facts that were left unconsidered, unresolved or improperly resolved
9 in the R&R.

10 CERTIFICATE OF APPEALABILITY

11 This Court has authority to issue a Certificate of Appealability
12 (COA), if the Petitioner has made a substantial showing that he was
13 denied a federal constitutional right. 28 U.S.C. § 2253(c)(2). The COA
14 shall indicate which specific issue or issues where there is substantial
15 showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(3).

16 "Where a district court has rejected the constitutional claims on
17 the merits, the showing required to satisfy § 2253(c) is straightforward:
18 The petitioner must demonstrate that reasonable jurists would find the
19 district court's assessment of the constitutional claims debatable or
20 wrong." *United States v. Martin*, 226 F.3d 1042, 1046 (9th Cir. 2000)
21 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).)

22 The issue is somewhat more complicated where the district court
23 dismisses the petition based on procedural grounds, without reaching the
24 merits of the underlying claim, then the COA issues if the prisoner
25 shows, at least, that jurists of reason would find it debatable whether
26 the petition states a valid claim of the denial of a constitutional right
27 and that jurists of reason would find it debatable whether the district

1 court was correct in its procedural ruling. *Martin*, 226 F.3d at 1046. The
2 first step is to decide whether the petition raises a debatable
3 constitutional question, then the question is whether the procedural
4 issue raised in the petition is highly debatable. *Id.*

5 Here, the Court ruled on both the merits and on procedural grounds.
6 The Court finds that the Petition failed to raise any constitutional
7 issues or procedural issues that would be highly debatable among jurists
8 of reason.

9 **CONCLUSION**

10 Accordingly, after conducting a de novo review of the record,

11 **IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation
12 (Doc. 19) in its entirety. The Objections raised by the Petitioner are
13 **OVERRULED**.

14 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus
15 (Doc. 1) is **DENIED** and this action is **DISMISSED** with prejudice. Final
16 Judgment to enter separately.

17 **IT IS FURTHER ORDERED** that the Certificate of Appealability is
18 **DENIED**.

19 DATED this 19th day of May, 2014.

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23 David C. Bury
24 United States District Judge
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