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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Timothy Kevin Owens,	)	
	)	CV-14-2443-TUC-DCB
Petitioner,	)	
v.	)	
	)	
Charles L. Ryan, et al.,	)	<b>ORDER</b>
	)	
Respondents.	)	
	)	
_____	)	

This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(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 (Doc. 1). Before the Court is the Magistrate Judge’s Report and Recommendation (Doc. 36). The Magistrate Judge recommends to the Court that relief may be granted as to one claim with denial of the remaining claims. The Petitioner filed Objections (Doc. 37) and the Respondents filed a Reply (Doc. 38).

**STANDARD OF REVIEW**

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



1 to overcome the defaults; Claims 6, 11, 20, and the in effective  
2 assistance of counsel (IAC) portions of Claims 9, 12, 13, and 15-18 fail  
3 on the merits; Claims 4, 7, and 8 are properly exhausted but lack merit;  
4 and, Claims 19, 21 and 22 are not legally cognizable, in part, and lack  
5 merit, in part. The Court will adopt the R&R and will deny Claims 1-13  
6 and 15-22.

7 The Court will also adopt the recommendation that Claim 14 is  
8 procedurally defaulted, but that Petitioner has established cause and  
9 prejudice to overcome the default. The Court finds Petitioner is entitled  
10 to relief on Claim 14. This Court will grant the writ as to this claim,  
11 which results in overturning the conviction and sentence on Count 7<sup>1</sup> of  
12 the Indictment, as follows:

13 The Arizona Court of Appeals holds that when a defendant is  
14 sentenced twice for the same offense, one of the sentences  
15 must be vacated even if they were imposed concurrently and  
16 did not increase the length of imprisonment. See *State v.*  
*Brown*, 177 P.3d 878, 882-83, 217 Ariz. 617, 621-22 (Ct. App.  
2008).

17 In finding that the underlying claims of trial and appellate  
18 IAC are meritorious, the Court necessarily finds that PCR  
19 counsel was deficient in failing to raise these substantial  
20 claims. See *Detrich v. Ryan*, 740 F.3d 1237, 1245-46 (9th  
21 Cir. 2013). Therefore, there is cause to excuse the default of the IAC portion of Claim 14. *Id.* And, the  
22 Court finds it  
23 wins on the merits.  
24 (R&R at 28.)

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25 <sup>1</sup>Petitioner alleged trial and appellate counsel were ineffective for  
26 failing to raise the prohibition against double jeopardy as to Count 33,  
27 which became Count 7 in the indictment presented to the jury. The court  
28 entered judgment on Count 7 as possession of a dangerous drug for sale  
committed on November 7, 2004, not importation. (Doc. 13, Ex. MM at 4-5.)  
The court entered judgment for the same crime as to Count 8. (*Id.* at 5.)  
Ultimately, the Court sentenced Petitioner twice for these duplicate  
offenses, not for one count of possession and one count of importation.  
(*Id.* at 14; Ex. NN at 6-7.) Petitioner's sentences for Counts 7 and 8  
constitute multiple punishments for the same offense, which is  
unquestionably precluded by the double jeopardy clause. See *Brown v.*  
*Ohio*, 432 U.S. 161, 165 (1977). (Doc. 36 at 26-27.)

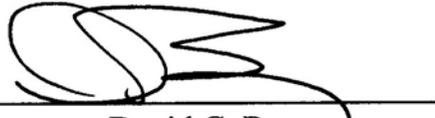
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**CONCLUSION**

Accordingly, after conducting a de novo review of the record,  
**IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation  
(Doc. 36) in its entirety. The Objections (Doc. 37) raised by the  
Petitioner are **OVERRULED**.

**IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus  
is **DENIED** on all claims but for claim 14. The Petition is **GRANTED** on  
claim 14, thereby overturning the conviction and sentence on Count 7 of  
the state court Indictment.<sup>2</sup> This action is remanded to the state court  
for resentencing based on this Order. Clerk's Office to enter Judgment.

DATED this 17<sup>th</sup> day of June, 2016.

  
David C. Bury  
United States District Judge

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<sup>2</sup>After a 7-day jury trial, the state court jury convicted Petitioner  
of all 22 counts alleged in the indictment. (Exhibit JJ; Exhibit EE, at  
37-44.) The jury also found all of the state's sentencing enhancement  
allegations true, beyond a reasonable doubt. (*Id.*) On February 12, 2007,  
the state trial court sentenced Petitioner to six concurrent life  
sentences without parole eligibility for 25 years (Counts 3, 7-8, 19-21)  
and 16 lesser prison terms, which ran concurrently with the life  
sentences. (Exhibit NN; Exhibit MM, at 13-18.) (Doc. 13 at 23.) Thus,  
the result here is that, in all likelihood, Petitioner will serve five  
rather than six concurrent life sentences without parole eligibility for  
25 years.