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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MIKE SHAWRON MORGAN, ) Case No. CV 16-5110-DMG (JPR)  
)  
Petitioner, )  
)  
v. ) ORDER ACCEPTING FINDINGS AND  
) RECOMMENDATIONS OF U.S.  
) MAGISTRATE JUDGE  
DANIEL PARAMO, Warden, )  
)  
Respondent. )  
)  
\_\_\_\_\_ )

The Court has reviewed the Petition, records on file, and Report and Recommendation of U.S. Magistrate Judge. See 28 U.S.C. § 636. On May 8, 2017, Petitioner filed objections to the R. & R., which he seems to believe is the work of the Attorney General. (See, e.g., Objs. at 1 (referring to "Attorney General's Report and Recommendation").)<sup>1</sup> His objections essentially repeat arguments in the Petition. A few of his contentions, however, require a brief discussion.

Petitioner objects to the Magistrate Judge's finding that

<sup>1</sup> On August 1, 2017, Petitioner filed a document purporting to contain "supplemental objections" to the R. & R. It appears to be a verbatim copy of his earlier set of objections. (See Aug. 1, 2017 Objs. at 9 (stating that he is "enclosing a copy" of his May 8 Objections "to assure clarity of claims and that all time constraints are met").)

1 the Petition is untimely despite his claim of actual innocence.  
2 (See id. at 4-5.) The chief evidence he cites to show his  
3 alleged innocence is the declaration of Wandisa Cowart-Morgan.  
4 (Id.) But as the Magistrate Judge pointed out (R. & R. at 18-  
5 21), Cowart-Morgan's several inconsistent and unsigned  
6 declarations dating from years after the events they describe are  
7 not credible.

8         Petitioner also raises objections concerning the admission  
9 of Kenneth Naranjo's testimony and the loss of "exculpatory  
10 evidence" consisting of clothing allegedly belonging to him that  
11 was discarded near the crime scene. (Objs. at 3.) To the extent  
12 those contentions are intended as additional support for his  
13 actual-innocence claim, they are based on facts known to him at  
14 the time of trial and therefore do not affect the application of  
15 the AEDPA statute of limitations. Further, they were not raised  
16 in the Petition as part of his actual-innocence claim. The Court  
17 accordingly declines to consider them for that purpose. See  
18 Akhtar v. Mesa, 698 F.3d 1202, 1208 (9th Cir. 2012) (court must  
19 exercise discretion in refusing to consider new arguments raised  
20 in objections to magistrate judge's report and recommendation).

21         Petitioner also objects to portions of the Magistrate  
22 Judge's adoption of the factual summary from the California Court  
23 of Appeal. (Objs. at 1-4.) As the Magistrate Judge pointed out  
24 (see R. & R. at 4), the factual summary in a state appellate-  
25 court opinion is entitled to a presumption of correctness under  
26 28 U.S.C. § 2254(e)(1), see Crittenden v. Chappell, 804 F.3d 998,  
27 1010-11 (9th Cir. 2015). That presumption may be rebutted by  
28 clear and convincing evidence. Id. Petitioner has not made that

1 showing, and even if he had there is nothing to suggest that it  
2 would affect the application of the one-year statute of  
3 limitations to his case. For example, Petitioner objects to the  
4 court of appeal's statement that victim John Cho saw a gun in  
5 Petitioner's waistband because it was actually victim Shinho Cho  
6 who did, he says. (Objs. at 2.) He does not explain how or why  
7 that "fact" makes any difference, however.

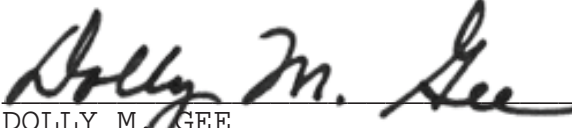
8 Finally, Petitioner attempts to bring a claim that the  
9 length of his sentence amounts to unconstitutional cruel and  
10 unusual punishment. (See id. at 7.) That claim appears nowhere  
11 in the Petition. Even if the Court had discretion to consider  
12 habeas claims, as opposed to arguments, raised for the first time  
13 in objections to an R. & R., see Akhtar, 698 F.3d at 1208; but  
14 see Cacoperdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994)  
15 (court need not consider habeas claims raised for first time in  
16 traverse), Petitioner's new claim has not been exhausted in state  
17 court and is likely time-barred and therefore not appropriate for  
18 review, see Marquez-Ortiz v. Sullivan, No. SACV 08-552 ABC (FFM),  
19 2012 WL 294741, at \*1 (C.D. Cal. Feb. 1, 2012) (declining to  
20 consider habeas petitioner's additional claims raised for first  
21 time in objections to report and recommendation in part because  
22 they were not exhausted in state court).

23 Having reviewed de novo those portions of the R. & R. to  
24 which objections were filed, the Court accepts the findings and  
25 recommendations of the Magistrate Judge. IT THEREFORE IS ORDERED  
26 that Respondent's motion to dismiss is granted, the Petition is  
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1 denied, and Judgment be entered dismissing this action with  
2 prejudice.

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DATED: December 28 2017

  
DOLLY M. GEE  
UNITED STATES DISTRICT JUDGE