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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES WILLIAM BRAMMER,)	CASE NO. CV 16-7483-MWF (FFM)
)	
Petitioner,)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF UNITED
v.)	STATES MAGISTRATE JUDGE
)	
RAYMOND MADDEN,)	
)	
Respondent.)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition, records on file, relevant pleadings, and the Report and Recommendation of United States Magistrate Judge. Further, the Court has engaged in a *de novo* review of those portions of the Report to which Petitioner has objected.

Most of the arguments that Petitioner makes in his objections are sufficiently addressed in the Magistrate Judge’s Report. A few of his arguments, however, warrant further discussion. First, Petitioner contends that the Magistrate Judge erred in analyzing Petitioner’s allegations of judicial misconduct. Specifically, Petitioner faults the Magistrate Judge for requiring Petitioner to identify some extrajudicial source of bias or partiality on the trial court’s part in order to succeed on his judicial

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1 misconduct claims.¹ According to Petitioner, clearly established Supreme Court
2 precedent does not require him to make any such showing. Instead, relying on the
3 Supreme Court’s opinion in *Rippo v. Baker*, __ U.S. __, 137 S. Ct. 905, 907, 197 L.
4 Ed. 2d 167 (2017), Petitioner contends that he can succeed on his judicial misconduct
5 claim provided he show that, objectively speaking, it is probable that the trial court
6 was biased against him, regardless of whether he can, in fact, prove that the trial court
7 was actually biased against him.

8 In *Rippo*, the Supreme Court held that recusal is required when, “objectively
9 speaking, ‘the probability of actual bias on the part of the judge or decisionmaker is
10 too high to be constitutionally tolerable.’” 137 S. Ct. at 907 (citation omitted).
11 Recognizing that actual bias cannot always be determined, the Supreme Court relies on
12 an objective standard asking “whether, as an objective matter, ‘the average judge in his
13 position is likely to be neutral, or whether there is an unconstitutional potential for
14 bias.’” *Williams v. Pennsylvania*, __ U.S. __, 136 S. Ct. 1899, 1905, 195 L. Ed. 2d 132
15 (2016).

16 Here, however, there is no evidence, “objectively speaking,” to suggest that the
17 trial court had any actual bias either against Petitioner or in favor of the prosecution.
18 In an effort to show bias, Petitioner, by and large (though not exclusively), relies on
19 numerous rulings that the trial court made that were adverse to Petitioner. But, as
20 explained in the Magistrate’s Report, such adverse rulings, in and of themselves, do
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22 ¹ Petitioner’s summary of the Magistrate Judge’s Report, in this regard, is
23 inaccurate. The Magistrate Judge did not state, as Petitioner suggests, that a habeas
24 petitioner can never succeed on a judicial bias claim absent some affirmative proof of
25 an extrajudicial source of bias. Rather, the Magistrate Judge correctly stated the
26 following: “‘In the absence of any evidence of some extrajudicial source of bias or
27 partiality, neither adverse rulings nor impatient remarks are generally sufficient to
28 overcome the presumption of judicial integrity, even if those remarks are critical or
disapproving of, or even hostile to, counsel, the parties, or their cases.’” (Report at 9
(quoting *Larson v. Palmateer*, 515 F.3d 1057, 1067 (9th Cir. 2008) (quoting *Liteky v.*
United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994)).)

1 not support the conclusion that the trial court was in any way biased against Petitioner,
2 let alone the conclusion that there was an unacceptably high probability that the trial
3 court was biased. *Compare Tumey v. Ohio*, 273 U.S. 510, 523-24, 47 S. Ct. 437, 71 L.
4 Ed. 749 (1927) (holding that judge may not preside over case in which he has “direct,
5 personal, substantial, pecuniary interest”). What is more, Petitioner’s other attempts to
6 show bias fail for the reasons explained in the Report. Thus, even under *Rippo*,
7 Petitioner’s judicial misconduct claims fail.

8 Second, Petitioner asserts that the Magistrate Judge did not review Petitioner’s
9 traverse or the record from Petitioner’s trial. This assertion is belied by the Report,
10 itself. Indeed, the Magistrate Judge’s Report specifically references Petitioner’s
11 traverse no less than four different times. What is more, the Report directly quotes
12 both Petitioner’s Traverse and the trial record. (*See, e.g.*, Report at 28, 29, 31, 32, 48.)
13 To be sure, in his fifty-nine page Report, the Magistrate Judge did not address many of
14 the claims of error that Petitioner asserted in his Traverse. But that fact was not
15 attributable to oversight; rather, it was attributable to the fact that Petitioner did not
16 raise those claims in his First Amended Petition (“FAP”). Petitioner was explicitly
17 admonished that the Court would not consider claims raised before this Court for the
18 first time in a traverse. Moreover, as the Magistrate Judge noted, Petitioner’s case had
19 been pending for over a year by the time that he filed his traverse. And, in that time,
20 Petitioner had already filed an amended petition. Furthermore, by the time Petitioner
21 filed his traverse, Respondent had already filed a ninety-one page return to Petitioner’s
22 FAP. Given these facts, there is no reason to consider any claim that Petitioner raised
23 in his traverse, but did not raise in his FAP.² *See Cacoperdo v. Demosthenes*, 37 F.3d

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25 ² To the extent that Petitioner complains that the Magistrate Judge failed to address
26 each and every purportedly erroneous ruling by the trial court that Petitioner identified
27 in his traverse, Petitioner’s complaint is not well-taken. Petitioner identified the
28 purportedly erroneous rulings in an effort to substantiate his judicial bias claims.

(continued...)

1 504, 507 (9th Cir. 1994) (holding that traverse is not proper pleading in which to raise
2 claim for first time); *Brown v. Roe*, 279 F.3d 742, 745 (9th Cir. 2002) (requiring courts
3 to exercise discretion when deciding whether or not to consider claims not asserted in
4 petition).

5 Finally, Petitioner alleges that the Magistrate Judge made numerous factually
6 inaccurate statements in his Report. However, none of the purported inaccuracies cited
7 by Petitioner impacts the soundness of how the Magistrate Judge resolved the grounds
8 for relief that Petitioner raised in his FAP. Moreover, none of the purported
9 inaccuracies in the Report change the fact that the evidence against Petitioner was
10 overwhelming -- evidence that included (1) Petitioner's detailed confession regarding
11 the numerous charged robberies;³ (2) a covertly recorded phone call between Petitioner
12 and his daughter in which he incriminated himself and tacitly admitted to committing
13 at least one, if not more, of the charged robberies; (3) the results of a search of
14 Petitioner's home that turned up several distinct items matching those that the
15 perpetrator of the charged robberies used to disguise his appearance; (4) positive
16 identifications (at one time or another) of Petitioner as the culprit from victims of each
17 of the charged robberies; and (5) the fact that all robberies committed in the unique
18 manner employed by the culprit in the charged robberies ceased after Petitioner's
19 arrest. As such, regardless of any supposed factual inaccuracies in the Report,
20 Petitioner cannot show the requisite prejudice to succeed on any of the grounds for

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23 ²(...continued)

24 However, as the Magistrate Judge noted, adverse ruling and impatient remarks are
25 insufficient to establish judicial bias, absent evidence of some extrajudicial source of
26 bias or partiality.

27 ³ In his Objections, as he did in his Traverse, Petitioner argues that his confession
28 was obtained in violation of his Fifth Amendment right to an attorney. This argument
fails for the reasons set forth in the Magistrate Judge's Report. (*See* Report at 53-56.)

1 relief asserted in his FAP. *See Brecht v. Abrahamson*, 507 U.S. 619, 623, 113 S. Ct.
2 1710, 123 L. Ed. 2d 353 (1993).

3 * * *

4 In sum, Petitioner's objections are not meritorious. The Court, therefore,
5 accepts the findings and recommendations of the Magistrate Judge.

6 IT IS THEREFORE ORDERED that judgment be entered dismissing the
7 Petition with prejudice.

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10 DATED: December 21, 2018



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13 MICHAEL W. FITZGERALD
14 UNITED STATES DISTRICT JUDGE
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