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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EZZARD CHARLES ELLIS,

Petitioner,

v.

C.M. HARRISON,

Respondent.

) Case No. EDCV 05-0520 SJO (JEM)

) ORDER ACCEPTING FINDINGS AND
) RECOMMENDATIONS OF UNITED
) STATES MAGISTRATE JUDGE AND
) DENYING CERTIFICATE OF
) APPEALABILITY

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the pleadings, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Petitioner, through his counsel at the Federal Public Defender's Office, has filed Objections to the Court's April 19, 2016 Report and Recommendation ("R&R"), which recommends denial of the pending habeas petition and dismissal of this case. (See Docket Nos. 85 (R&R) and 90 (Objections).) The Court has engaged in a de novo review of those portions of the R&R to which Petitioner has objected.

Notwithstanding Petitioner's Objections, the Court accepts the findings and recommendations of the Magistrate Judge.

1 **PETITIONER’S OBJECTIONS**

2 The gravamen of the Objections is that the R&R mistakenly analyzed Petitioner's
3 primary ground for relief, Claim One(a) of the Petition. Petitioner states that "Claim
4 One(a) [] alleges that he was deprived of his right under the Sixth Amendment to the
5 effective assistance of counsel because his trial counsel's deep racial prejudice against his
6 client created an actual conflict of interest." (Objections at 1.) Petitioner goes on to state
7 that "[t]o give an African-American defendant a legal defender who harbors nothing but
8 'deep and utter contempt for African Americans' . . . is to subvert the rules of justice as they
9 stood at the time of [Petitioner's] conviction." (Objections at 6, citing Mayfield v. Woodford,
10 270 F.3d 915, 939 (9th Cir. 2001) (Graber, J., dissenting).) Petitioner also states that he is
11 "not trying prove his actual innocence; he [is] trying to prove he had received an unfair trial
12 because his counsel's racism placed him in conflict with his African-American client."
13 (Objections at 7.)

14 The Court construes the Objections essentially to raise five issues:

- 15 (1) The "Factual Background" of the R&R improperly included the Magistrate Judge's
16 own review of the record in addition to facts explicitly found by the California state courts;
- 17 (2) The R&R failed to determine whether AEDPA's deferential standard of review
18 should apply to review of Claim One(a), or whether it should be reviewed de novo;
- 19 (3) The R&R improperly "conflated" its review of Claim One(a) under Teague v.
20 Lane, 489 U.S. 288 (1989), with the standard of review set forth at 28 U.S.C. § 2254(d);
- 21 (4) The R&R improperly determined that habeas relief on Claim One(a) would
22 necessitate creation of a "new rule" that would contravene Teague; and
- 23 (5) Petitioner is entitled a Certificate of Appealability.

24 Petitioner argues that "[b]ecause [Petitioner] has shown that 28 U.S.C. § 2254 does
25 not apply to his claim [Claim One(a)] – or alternatively, that its requirements are met – and
26 because he has shown that the applicable law is retroactive under sufficient federal
27

1 precedent, the Report should be rejected and/or amended. Alternatively, because the claim
2 is at least debatable among jurists of reason, this Court should issue a certificate of
3 appealability." (Objections at 1-2.)

4 DISCUSSION

5 Petitioner's objections to the "Factual Background" are conclusory and unavailing.
6 This case has a long procedural history and, in order to make the various factual summaries
7 from the state courts and the omitted records of pertinent facts coherent and readable, the
8 R&R combined facts that were "found" by the state courts with facts evidenced in the
9 record. Petitioner does not challenge any particular "finding of fact," and the R&R does not
10 rely on any facts set forth in the factual background as "state court findings of fact." The
11 R&R merely summarizes the factual background of the case based on an "independent
12 review" of the record. Because Petitioner does not take issue with any particular "fact" in
13 the R&R, his objections to the factual background are without merit.

14 Contrary to Petitioner's objection that the R&R never ruled on his contention that
15 Claim One(a) should be reviewed de novo because the state courts did not properly
16 adjudicate the claim on the merits, the R&R explicitly found that the state courts had
17 reached the merits of Claim One(a) and, therefore, the claim would be reviewed under the
18 AEDPA standard. (See R&R at 23.) The R&R also noted, at the end of the discussion of
19 the merits of Claim One(a), that even if the claim was reviewed de novo, it must still be
20 denied. (See R&R at 37-38.)

21 Petitioner's complaints that the R&R "conflated" its analysis of the Teague issue and
22 its review under § 2254(d) are conclusory, belied by the R&R, and unavailing in any event.
23 The R&R roughly framed the new "rule" proposed by Petitioner as stating that, where
24 defense counsel has been shown to personally hold racist views, whether expressed to the
25 defendant or not during the course of the representation, a per se conflict of interest would
26 be created that would allow for habeas relief under Cuyler v. Sullivan, 446 U.S. 335, 345

1 (1980), without any need to show that defense counsel was ineffective under the two-prong
2 standard set forth in Strickland v. Washington, 446 U.S. 668, 690 (1984). The R&R
3 explicitly found that Petitioner's proposed rule would be a "new rule" and would therefore be
4 barred by Teague. (See R&R at 35.) The R&R also found that Claim One(a) must fail
5 under § 2254(d) (see R&R at 35-37) and under de novo review (see R&R at 37-38).
6 Consequently, whatever complaints Petitioner might have about the form or methodology of
7 the R&R, it explicitly made conclusions based on Teague, § 2254(d), and a de novo review
8 of Claim One(a).

9 Petitioner's argument in Ground One(a) – that his case is analogous and should be
10 governed by the standard set forth in Cuyler – is not colorable. There is no doubt that
11 Cuyler cannot be extended to Petitioner's case.


12 CERTIFICATE OF APPEALABILITY

13 Pursuant to Rule 11 of the Rules Governing Section 2254 cases, the Court “must
14 issue or deny a certificate of appealability when it enters a final order adverse to the
15 applicant.” For the reasons stated in the R&R and herein, the Court concludes that
16 Petitioner has not made a substantial showing of the denial of a constitutional right, as is
17 required to support the issuance of a certificate of appealability. See 28 U.S.C. §
18 2253(c)(2).

19 ORDER

20 IT IS ORDERED that: (1) the Petition for Writ of Habeas Corpus is denied;
21 (2) Judgment shall be entered dismissing the action with prejudice; and (3) a Certificate of
22 Appealability is denied.

23 DATED: July 26, 2016

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25 _____
26 S. JAMES OTERO
27 UNITED STATES DISTRICT JUDGE
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