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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KWANG CHOL JOY,)	Case No. SACV 17-1195-JLS (JPR)
)	
Petitioner,)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF U.S.
v.)	MAGISTRATE JUDGE
)	
CRAIG KOENIG, Acting Warden,)	
)	
Respondent.)	

The Court has reviewed the Petition, records on file, and Report and Recommendation of U.S. Magistrate Judge, which recommends that judgment be entered denying the Petition and dismissing this action with prejudice. On May 18, 2020, Petitioner filed Objections to the R. & R., in which he mostly simply repeats arguments from his Petition and Traverse.

For instance, Petitioner continues to argue that "jury selection error" deprived him of a fair trial. (Objs. at 9.) He does not object to the Magistrate Judge's finding that habeas relief is not warranted on his claim that the trial court employed

1 an improper voir dire procedure. (See R. & R. at 29-31.) Rather,
2 he contends that in rejecting his alternative argument that he was
3 deprived of his constitutional right to a "petit jury that is as
4 near an approximation of the ideal cross-section of the community
5 as the process of random draw permits" (Pet. at 25), the Magistrate
6 Judge incorrectly stated that defense counsel had not challenged
7 the jury pool on that basis. (Objs. at 9). But although counsel
8 moved to dismiss the jury pool because it was "no longer
9 representative of the community" given how voir dire had unfolded
10 (Pet., Ex. 1 at 4), he never argued, as the Magistrate Judge
11 recognized (see R. & R. at 32), that the procedure
12 unconstitutionally produced an "all Caucasian" jury pool or jury
13 (Pet. at 25). The record does not reflect the racial composition
14 of either, and Petitioner has not submitted any evidence on that
15 score, as the Magistrate Judge also recognized. (See R. & R. at
16 32.) Thus, she correctly found that Petitioner had failed to make
17 a prima facie showing that any protected group was not adequately
18 represented in the jury pool or was disproportionately excluded as
19 a result of voir dire. (See id. at 31-33.)

20 Petitioner also continues to maintain that the prosecution
21 failed to disclose favorable evidence to the defense. (Objs. at 5-
22 7.) To start, the Magistrate Judge correctly refused to consider
23 Petitioner's unexhausted claim, improperly raised for the first
24 time in an unauthorized addendum to the Traverse, that the
25 prosecution found and failed to turn over Ramos's missing cell
26 phone. (See R. & R. at 33 n.8.) Petitioner's attempt to press
27 that claim in his objections (see Objs. at 5-6) fails for the same
28 reasons. Moreover, he has not shown that any of the evidence the

1 prosecution purportedly failed to disclose would have been
2 favorable to his defense or that an evidentiary hearing might so
3 establish. His conclusory assertion that the allegedly suppressed
4 evidence must have been "favorable" (id. at 6) does not satisfy his
5 burden.¹

6 Petitioner's other objections are similarly conclusory. For
7 instance, he asserts that the Magistrate Judge improperly rejected
8 his ineffective-assistance-of-counsel claim, arguing that if
9 counsel had investigated Ramos's allegedly missing phone records
10 the results "would have been in [his] favor." (Id. at 3.) But he
11 provides no basis for that conclusion. Likewise, although he
12 repeats that counsel was ineffective for not calling an expert to
13 contradict a prosecution witness's testimony that chemicals found
14 in Ramos's blood were produced postmortem (id. at 5), there is no
15 reason to believe any expert would have so testified, and, as the
16 Magistrate Judge found, evidence that Ramos was poisoned would only
17 have further inculpated Petitioner (see R. & R. at 57).² Nor is
18 there any reason to believe that additional analysis of blood found
19 on Ramos's pajamas would have been exculpatory. The DNA analyst
20 who compared the blood to samples of Ramos's and Petitioner's DNA
21 testified that it was consistent with Ramos's and ruled out
22 Petitioner as its source. (See Lodged Doc. 2, 2 Rep.'s Tr. at 366,

23
24 ¹ Petitioner contends that the Court should liberally construe
25 his pleadings on account of his pro se status. (Objs. at 2.) But
26 his burden to establish entitlement to federal habeas relief is not
27 lessened because he represents himself.

28 ² Contrary to Petitioner's assertion (see Objs. at 4), the
Magistrate Judge correctly noted that his counsel did call an
expert witness – the crime-lab pathologist who performed Ramos's
autopsy and who was not called as a witness by the prosecution (see
Lodged Doc. 2, 2 Rep.'s Tr. at 444, 454).

1 368, 372-73.) Petitioner's insistence that the blood was not
2 Ramos's (Objs. at 4) is and was, as the Magistrate Judge recognized
3 (see R. & R. at 55 n.15), based on a misstatement by the prosecutor
4 that was promptly corrected. Finally, Petitioner refers to Senate
5 Bill 1437 (see Objs. at 10), but that law, which amended
6 California's felony-murder rule and went into effect after
7 Petitioner's conviction became final, has no relevance to this
8 case.

9 Having reviewed de novo those portions of the R. & R. to which
10 Petitioner objects, the Court agrees with and accepts the findings
11 and recommendations of the Magistrate Judge. IT THEREFORE IS
12 ORDERED that judgment be entered denying the Petition and
13 dismissing this action with prejudice.



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16 DATED: September 2, 2020

JOSEPHINE L. STATON
U.S. DISTRICT JUDGE