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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JAMAL WHITE,

1:09-cv-01013-OWW-SMS (HC)

Petitioner,

FINDINGS AND RECOMMENDATION  
REGARDING PETITION FOR WRIT OF  
HABEAS CORPUS

v.

[Docs. 1, 6, 7]

JOHN C. MARSHALL,

Respondent.

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Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

BACKGROUND

Petitioner filed the instant petition for writ of habeas corpus in the United States District Court for the Central District of California, Western Division on October 23, 2007. On January 23, 2008, that Court dismissed the petition without prejudice. (Court Doc. 10.) However, on September 29, 2008, that Court considered Petitioner’s motion for reconsideration and vacated the January 23, 2008, order of dismissal based on Petitioner’s November 19, 2007, First Amended Petition. (Court Doc. 20.) The Court ordered a response to the petition on October 10, 2009. (Court Doc. 21.)

On May 29, 2009, Respondent filed a motion to transfer the case to this Court. (Court Doc. 27.) On June 8, 2009, the Court granted Respondent’s motion, and the case was transferred to this Court and received on June 10, 2009. (Court Docs. 28, 29.)

DISCUSSION

A. Preliminary Review of Petition

1 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

2 If it plainly appears from the petition and any attached exhibits that the petitioner is not  
3 entitled to relief in the district court, the judge must dismiss the petition and direct the  
4 clerk to notify the petitioner.

5 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ  
6 of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to  
7 dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9<sup>th</sup>  
8 Cir.2001).

9 B. Failure to State a Cognizable Federal Claim

10 The sole ground raised in Petitioner's amended petition is a denial of due process under  
11 the Fourth Amendment when he was subjected to an unreasonable search and seizure. Petitioner  
12 further alleges that the trial court erred in denying his suppression motion based on the alleged  
13 unreasonable search and seizure.

14 A federal district court cannot grant habeas corpus relief on the ground that evidence was  
15 obtained by an unconstitutional search and seizure if the state court has provided the petitioner  
16 with a "full and fair opportunity to litigate" the Fourth Amendment issue. Stone v. Powell, 428  
17 U.S. 465, 494 (1976); Woolery v. Arvan, 8 F.3d 1325, 1326 (9<sup>th</sup> Cir. 1993), *cert denied*, 511 U.S.  
18 1057 (1994). The only inquiry this Court can make is whether petitioner had a fair opportunity to  
19 litigate his claim, not whether petitioner did litigate nor even whether the court correctly decided  
20 the claim. Ortiz-Sandoval v. Gomez, 81 F.3d 891, 899 (9<sup>th</sup> Cir. 1996); see also Gordon v. Duran,  
21 895 F.2d 610, 613 (9<sup>th</sup> Cir. 1990) (holding that because Cal. Penal Code § 1538.5 provides  
22 opportunity to challenge evidence, dismissal under Stone was necessary).

23 The policy behind the Stone Court's analysis is that the exclusionary rule is applied to  
24 stop future unconstitutional conduct of law enforcement. Stone, 428 U.S. at 492. However,  
25 excluding evidence that is not untrustworthy creates a windfall to the defendant at a substantial  
26 societal cost. See Stone, 428 U.S. at 489-90; Woolery, 8 F.3d at 1327-28. Thus, the Ninth  
27 Circuit has described the rationale for this rule by saying:

28 The holding is grounded in the Court's conclusion that in cases where a  
petitioner's Fourth Amendment claim has been adequately litigated in state court,  
enforcing the exclusionary rule through writs of habeas corpus would not further

1 the deterrent and educative purposes of the rule to an extent sufficient to counter  
2 the negative effect such a policy would have on the interests of judicial efficiency,  
comity and federalism.

3 Woolery, 8 F.3d at 1326; see also Stone, 428 U.S. at 493-494.

4 In this case, Petitioner's Fourth Amendment claim was litigated through a suppression  
5 hearing in the Kern County Superior Court. (Court Doc. 6. First Amended Petition, at 1, Court  
6 Doc. 7, Memorandum in Support of Amended Petition, at 3-5.) The trial court denied the  
7 motion. Id. Therefore, the state court provided Petitioner a "full and fair opportunity to litigate"  
8 his Fourth Amendment claim. Stone v. Powell, 428 U.S. 465, 494 (1976). Pursuant to Stone v.  
9 Powell, the Court cannot grant habeas relief on this ground, and it should be dismissed from the  
10 petition. The fact that the trial court disagreed with Petitioner's argument does not change this  
11 result.

12 RECOMMENDATION

13 Accordingly, the Court RECOMMENDS that instant petition for writ of habeas corpus be  
14 DISMISSED with prejudice.

15 This Findings and Recommendation is submitted to the assigned United States District  
16 Court Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 72-304 of the  
17 Local Rules of Practice for the United States District Court, Eastern District of California.  
18 Within thirty (30) days after being served with a copy, any party may file written objections with  
19 the court and serve a copy on all parties. Such a document should be captioned "Objections to  
20 Magistrate Judge's Findings and Recommendation." Replies to the objections shall be served  
21 and filed within ten (10) court days (plus three days if served by mail) after service of the  
22 objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §  
23 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may  
24 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
25 1991).

26 IT IS SO ORDERED.

27 **Dated: July 8, 2009**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE