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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DIEGO LEGASPI,

Petitioner,

v.

MATTHEW CATE,

Respondent.

No. C 10-2731 WHA (PR)

**ORDER DENYING MOTION TO
RECONSIDER**

(Docket No. 5)

Petitioner filed this pro se petition for a writ of habeas corpus. The petition was dismissed because the two claims petitioner raised did not present a cognizable basis for federal habeas relief. Petitioner moves to reconsider the dismissal.

As explained in the dismissal order, petitioner's claims are based upon his Fourth Amendment rights to be free from an unreasonable search or seizure, which may not be the basis for federal habeas relief. *See Stone v. Powell*, 428 U.S. 465, 481-82, 494 (1976). Even if the state courts' determination of the Fourth Amendment issues is improper, it will not be remedied in federal habeas corpus actions so long as the petitioner was provided a full and fair opportunity to litigate the issue. *Locks v. Sumner*, 703 F.2d 403, 408 (9th Cir. 1983). All *Stone* requires is the initial opportunity for a fair hearing. Such an opportunity for a fair hearing forecloses this court's inquiry upon habeas petition into the trial court's subsequent course of action. *Caldwell v. Cupp*, 781 F.2d 714, 715 (9th Cir. 1986). The existence of a state procedure allowing an opportunity for full and fair litigation of Fourth Amendment claims, rather than a defendant's actual use of those procedures, bars federal habeas consideration of those claims.

1 *Gordon v. Duran*, 895 F.2d 610, 613-14 (9th Cir. 1990). California state procedure provides an
2 opportunity for full litigation of any Fourth Amendment claim. Indeed, petitioner indicates in
3 his motion that he filed a motion to suppress the evidence based upon the improper seizure, that
4 the trial court heard the motion, and ruled against petitioner. Petitioner claims that there was
5 not a full and fair opportunity to litigate his claim because denied his motion to suppress the
6 fruits of what he asserts was an unreasonable seizure. That petitioner's claim was denied does
7 not mean that he did not have a full and fair opportunity to litigate. Moreover, *Stone* precludes
8 this court from inquiring on federal habeas review whether the search was reasonable.

9 The motion for reconsideration (docket number 5) is **DENIED**.

10 **IT IS SO ORDERED.**

11 Dated: December 10, 2010.

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14 WILLIAM ALSUP
15 UNITED STATES DISTRICT JUDGE

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