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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ISIDRO ROMAN,  
Petitioner,  
v.  
S. FRAUENHEIM,  
Respondent.

Case No. [16-cv-02985-HSG](#)

**ORDER DENYING PETITIONER'S  
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 45

Petitioner filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a 1994 state court conviction. Almost three years ago, the Court dismissed this petition as procedurally defaulted. Now pending before the Court is petitioner's "Motion to Reconsider [the] Unresolved Issue of Controversy With Respect[] to Ineffective Trial Counsel." Dkt. No. 45. For the reasons set forth below, the Court DENIES this motion.

**PROCEDURAL BACKGROUND**

The instant petition for a writ of habeas corpus challenges petitioner's 1994 state court conviction on the grounds that the prosecution violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose various pieces of exculpatory evidence showing that the victim posed a threat to petitioner at the time of the shooting, which forced petitioner to act in self-defense. Dkt. Nos. 1, 8. On May 30, 2017, the Court dismissed the petition as procedurally defaulted, denied a certificate of appealability, entered judgment in favor of respondent, and closed the case. Dkt. Nos. 28, 29.

Since the Court entered judgment against petitioner almost three years ago, petitioner has unsuccessfully continued to seek relief in various ways. Petitioner filed an unsuccessful motion for reconsideration (Dkt. Nos. 31, 32); unsuccessfully sought a certificate of appealability from the Ninth Circuit Court of Appeals so that he could appeal the denial of this petition (Dkt. Nos. 33,

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1 40); unsuccessfully sought to reopen this case in order to consider a claim that trial counsel was  
2 ineffective because he (or she) possessed the exculpatory evidence at the time of trial (Dkt. Nos.  
3 43, 44); and unsuccessfully sought leave from the Ninth Circuit Court of Appeals to file a second  
4 or successive petition (Dkt. No. 43-1 at 36-41).

### 5 DISCUSSION

6 Petitioner has filed a “Motion to Reconsider [the] Unresolved Issue of Controversy With  
7 Respect[] to Ineffective Trial Counsel.” Dkt. No. 45. Petitioner argues that the Court’s failure to  
8 resolve his ineffective assistance of trial counsel claim on the merits constitutes a miscarriage of  
9 justice that excuses any procedural default, and that the fact that he is a “greenhorn at law” and  
10 that he was mistaken in his assumption that appellate counsel would raise all viable issues on  
11 appeal constitute cause to excuse any procedural default.

12 As explained in the Court’s February 3, 2020 Order, the instant petition and action only  
13 alleged *Brady* claims; no ineffective assistance of trial counsel claim was raised. Dkt. No. 44. A  
14 claim that the prosecution withheld exculpatory evidence, i.e. a *Brady* claim, is distinct from a  
15 claim that trial counsel was ineffective for failing to present exculpatory evidence at trial, i.e. an  
16 ineffective assistance of counsel claim. A petitioner does not present all possible constitutional  
17 claims stemming from a common set of facts merely by raising one specific claim. *Cf.*  
18 *Gulbrandson v. Ryan*, 738 F.3d 976, 993 (9th Cir. 2013) (mere submission of a relevant affidavit  
19 to state court not sufficient to place that court on notice of all potential constitutional challenges  
20 stemming from that affidavit) (citing *Koerner v. Grigas*, 328 F.3d 1039, 1046-48 (9th Cir. 2003)  
21 (holding even though factual basis for claim was submitted to state court, claim itself not fairly  
22 presented to that court because facts were used exclusively to support another claim)).

23 If petitioner wishes for the district court to consider an ineffective assistance of trial  
24 counsel claim, he must raise this claim in a separate habeas petition. However, a separate petition  
25 claiming ineffective assistance of trial counsel is most likely a second or successive petition, and  
26 the Ninth Circuit Court of Appeals has denied petitioner leave to file a second or successive  
27 petition. Dkt. No. 43-1 at 36-41.

28 Regardless of whether such a petition would be second or successive, the Court need not

1 resolve an ineffective assistance of trial counsel claim in this action, as the petition did not present  
2 an ineffective assistance of trial counsel claim. Accordingly, petitioner’s request is DENIED.  
3 Dkt. No. 45.


4 **CONCLUSION**

5 For the foregoing reasons, petitioner’s “Motion to Reconsider [the] Unresolved Issue of  
6 Controversy With Respects to Ineffective Trial Counsel” is DENIED Dkt. No. 45.

7 This order terminates Dkt. No. 45.

8 **IT IS SO ORDERED.**

9 Dated: 4/29/2020

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11 HAYWOOD S. GILLIAM, JR.  
12 United States District Judge

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