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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DENAIL SHANE GREEN,  
  
Petitioner,  
  
vs.  
  
CHARLES M. HARRISON, Warden,  
  
Respondent.

CASE NO. 05CV1485-MMA (CAB)  
**ORDER:**  
**ADOPTING REPORT AND  
RECOMMENDATION;**  
  
[Doc. No. 104]  
**DENYING PETITION FOR WRIT  
OF HABEAS CORPUS**  
  
[Doc. No. 1]

Pending before the Court is the Report and Recommendation of Magistrate Judge Leo S. Papas, filed on May 6, 2009, recommending that the Court deny Petitioner’s Petition for Writ of Habeas Corpus. (Doc. No. 104.)

**BACKGROUND**

On July 25, 2004, Petitioner Denail Shane Green, a state prisoner proceeding with counsel, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 challenging his San Diego County Superior Court conviction in case number SCD137792 for possession of cocaine base, a violation of California Penal Code section 11350(a). (Resp’ts Lodgement No. 9 at 0122.)

Petitioner Green alleges six reasons for the Petition for Writ of Habeas Corpus: (1) ineffective assistance of trial counsel; (2) insufficient evidence to support his conviction; (3) that he should have been sentenced to a drug diversion program instead of prison; (4) prosecutorial

1 misconduct; (5) ineffective assistance of appellate counsel; and (6) that the trial court erroneously  
2 denied his motion to suppress evidence in violation of his Fourth Amendment rights. (*Pet.* at 5–9;  
3 *Pet’rs Supp. Mem. of P. & A.* (“*Pet’rs Mem.*”) at 1–22.)

4 On March 16, 2009, Respondent filed a response to the Petition for Writ of Habeas Corpus.  
5 (Doc. No. 103.) On May 6, 2009, Magistrate Judge Papas issued a Report and Recommendation  
6 recommending that the Court deny the Petition for Writ of Habeas Corpus. (Doc. No. 104.)

#### 7 STANDARD OF REVIEW

8 The duties of the district court in connection with a Magistrate Judge’s Report and  
9 Recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C.  
10 § 636(b)(1). Where the parties object to a Report and Recommendation, “[a] judge of the [district]  
11 court shall make a de novo determination of those portions of the [Report and Recommendation]  
12 to which objection is made.” 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149–50  
13 (1985). When no objections are filed, the district court need not review the Report and  
14 Recommendation de novo. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005); *United*  
15 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003) (en banc). A district court may  
16 nevertheless “accept, reject, or modify, in whole or in part, the findings or recommendations made  
17 by the magistrate judge.” 28 U.S.C. § 636(b)(1); *Wilkins v. Ramirez*, 455 F. Supp. 2d 1080, 1088  
18 (S.D. Cal. 2006); *Or. Natural Desert Ass’n v. Rasmussen*, 451 F. Supp. 2d 1202, 1205 (D. Or.  
19 2006).

#### 20 CONCLUSION & ORDER

21 Neither party objected to the Magistrate Judge’s Report and Recommendation in this case.  
22 After reviewing the Report and Recommendation in its entirety, the Court finds that the Magistrate  
23 Judge correctly concluded that: (1) none of the actions by Petitioner’s trial counsel amounted to an  
24 ineffective assistance of counsel; (2) there was sufficient evidence to support Petitioner’s  
25 conviction for possession of cocaine base; (3) Petitioner had no federal constitutional right to be  
26 sentenced to a drug diversion program; (4) Petitioner failed to support his prosecutorial  
27 misconduct claim because he did not provide evidence showing that the prosecutor suppressed  
28 material, exculpatory or impeachment evidence; (5) Petitioner failed to show ineffective assistance

1 of appellate counsel because he did not demonstrate that he would have prevailed on appeal; and  
2 (6) Petitioner was not entitled to federal habeas relief on his Fourth Amendment Claim because he  
3 had an opportunity to litigate the claim in state court.

4 **IT IS HEREBY ORDERED** that:

5 1. The Magistrate Judge's Report and Recommendation (Doc. No. 104) is  
6 **ADOPTED** in its entirety; and

7 2. Plaintiff's Petition for Writ of Habeas Corpus (Doc. No. 1) is **DENIED**.

8 **IT IS SO ORDERED.**

9 DATED: July 6, 2009

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11 Hon. Michael M. Anello  
12 United States District Judge

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