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

RAYMOND NEWSON,

Petitioner,

CASE NO. 10cv0746 WQH (MDD)

vs.

ORDER

EDMUND G. BROWN, JR., Attorney
General for the State of California,

Respondent.

HAYES, Judge:

The matter before the Court is the Report and Recommendation issued by the Magistrate Judge recommending that the Petition for Writ of Habeas Corpus filed by Petitioner Raymond Newson be denied. (ECF No. 52).

BACKGROUND

On December 19, 2006, Petitioner Raymond Newson was convicted by a jury in San Diego County Superior Court of selling, transporting, and possessing controlled substances with priors. (ECF No. 1 at 1-2).

On April 8, 2010, Petitioner filed a Petition for Writ of Habeas Corpus in this Court asserting six grounds for relief stemming from his 2006 conviction. (ECF No. 1). Petitioner contends that (1) the evidence presented at his trial was insufficient to support his conviction, (2) prejudicial and improper tactics by the prosecution tainted Petitioner's jury, (3) Petitioner's conviction was based on the prejudicial hearsay of a witness who was not available for cross-examination and his right of confrontation was denied, (4) Petitioner suffered ineffective assistance of trial counsel because his trial counsel failed to file a *Pitchess* motion or subpoena

1 Petitioner’s co-defendant for examination regarding her out of court statements, (5) Petitioner
2 suffered ineffective assistance of trial counsel because his trial counsel failed to request a
3 hearing under California Evidence Code § 402, and (6) Petitioner suffered ineffective
4 assistance of appellate counsel because his trial counsel failed to raise arguable issues on
5 appeal and inform Petitioner concerning the appellate court’s decision on direct appeal. On
6 June 2, 2011, Respondent filed an Answer. (ECF No. 31). On September 12, 2011, Petitioner
7 filed a Traverse. (ECF No. 49).

8 On April 18, 2012, the Magistrate Judge issued a Report and Recommendation
9 recommending that the Petition for Writ of Habeas Corpus be denied. (ECF No. 52). On May
10 23, 2012, Petitioner filed objections to the Report and Recommendation that copied the
11 arguments Petitioner asserted in his Petition and Traverse. (ECF No. 56).

12 DISCUSSION

13 The duties of the district court in connection with a Report and Recommendation of a
14 Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §
15 636(b)(1). When a party objects to a Report and Recommendation, “[a] judge of the [district]
16 court shall make a de novo determination of those portions of the [Report and
17 Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). When no objections
18 are filed, the district court need not review the Report and Recommendation de novo. *See*
19 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d
20 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may “accept, reject, or modify, in
21 whole or in part, the findings or recommendations made by the magistrate judge.” Fed. R. Civ.
22 P. 72(b); *see also* 28 U.S.C. § 636(b)(1). This Court has reviewed the Report and
23 Recommendation and the record in its entirety.

24 The Magistrate Judge correctly concluded that the claims raised by Petitioner on his
25 first Petition for Writ of Habeas Corpus to the Supreme Court of California, claims 1 and 5,
26 may be adjudicated on the merits. *Id.* at 6. The Magistrate Judge correctly concluded that the
27 claims raised by Petitioner in his second Petition to the Supreme Court of California, claims
28 2, 3, 4, and 6, are not procedurally barred and are entitled to adjudication on the merits. *Id.* at

1 7-8.

2 The Magistrate Judge correctly concluded that sufficient evidence was presented at trial
3 to support Petitioner’s conviction. *Id.* at 17. The Magistrate Judge correctly concluded that
4 Petitioner failed to show that he was denied a fair trial as a result of prosecutorial misconduct.
5 *Id.* at 20. The Magistrate Judge correctly concluded that Petitioner failed to show that any
6 hearsay rule was violated or that Petitioner was denied his Sixth Amendment rights. *Id.* at 24.
7 The Magistrate Judge correctly concluded that Petitioner failed to show that the decision of
8 defense counsel to not compel discovery of the police officer’s personnel files violated
9 *Strickland v. Washington*, 466 U.S. 668 (1984). (ECF No. 52 at 26). The Magistrate Judge
10 correctly concluded that Petitioner failed to show that the decision of defense counsel to not
11 subpoena Petitioner’s co-defendant violated *Strickland*. *Id.* at 26-27. The Magistrate Judge
12 correctly concluded that Petitioner failed to show that the decision of defense counsel to not
13 file a motion for a hearing pursuant to Cal. Evid. Code § 402 violated *Strickland*. *Id.* at 28.
14 The Magistrate Judge correctly concluded that the claim related to ineffective assistance of
15 appellate counsel fails because all of the claims that Petitioner faults appellate counsel for not
16 raising on appeal fail on the merits. *Id.* at 29.

17 **I. Certificate of Appealability**


18 A certificate of appealability must be obtained by a petitioner in order to pursue an
19 appeal from a final order in a Section 2254 habeas corpus proceeding. *See* 28 U.S.C. §
20 2253(c)(1)(A); Fed. R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules Governing
21 Section 2254 Cases, “[t]he district court must issue or deny a certificate of appealability when
22 it enters a final order adverse to the applicant.” A certificate of appealability may issue “only
23 if the applicant has made a substantial showing of the denial of a constitutional right.” 28
24 U.S.C. § 2253(c)(2). It must appear that reasonable jurists could find the district court’s
25 assessment of the petitioner’s constitutional claims debatable or wrong. *See Slack v.*
26 *McDaniel*, 529 U.S. 473, 484-85 (2000). The Court concludes that jurists of reason could not
27 find it debatable whether this Court was correct in denying the Petition. The Court denies a
28 certificate of appealability.

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CONCLUSION

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 52) issued by the Magistrate Judge is adopted in its entirety, except for the sentence on page 29, line 24-25, which is amended to read as follows: "Accordingly, the Court finds claims (2), (3), (4), and (6) not procedurally barred from review in federal court." The Petition for Writ of Habeas Corpus filed by Petitioner Raymond Newson is DENIED. (ECF No. 1). A certificate of appealability is denied.

DATED: August 8, 2012


WILLIAM Q. HAYES
United States District Judge