



1 findings and recommendations de novo *if objection is made*, but not otherwise.”).

2 Here, Petitioner failed to timely object to Magistrate Judge Adler’s report and  
3 recommendation. (*See* R&R 15 (ordering parties to file objections “not later than July 5, 2011”).)

4 Having reviewed the report and recommendation, the Court finds that it is thorough, well reasoned,  
5 and contains no clear error. Accordingly, the Court (1) **ADOPTS** Magistrate Judge Adler’s report and  
6 recommendation and (2) **DENIES** Petitioner’s first amended petition for writ of habeas corpus.

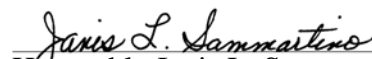
7 This Court is under an obligation to determine whether a certificate of appealability should  
8 issue in this matter. A certificate of appealability is authorized “if the applicant has made a substantial  
9 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this  
10 standard by demonstrating that jurists of reason could disagree with the district court’s resolution of  
11 his constitutional claims or that jurists could conclude the issues presented are adequate to deserve  
12 encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack*  
13 *v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must either (1) grant the certificate of appealability  
14 indicating which issues satisfy the required showing or (2) state why a certificate should not issue.  
15 Fed. R. App. P. 22(b).

16 Petitioner requests relief from his conviction for one count of possessing cocaine base for sale,  
17 two admitted prior convictions, and one prior strike conviction. The Court finds that reasonable jurists  
18 would agree with this Court’s resolution of Petitioner’s constitutional claims. Petitioner has already  
19 exercised his opportunity to litigate the alleged Fourth Amendment violations, and, therefore, he is  
20 precluded from raising the issue for habeas relief. *See Stone v. Powell*, 428 U.S. 465, 494 (1976).  
21 Additionally, reasonable jurists would agree that Petitioner failed to establish prejudice arising from  
22 ineffective assistance of counsel, which forecloses relief under AEDPA. *Premo v. Moore*, — U.S. —,  
23 131 S. Ct. 733, 745 (2011). Accordingly, the Court **DENIES** a certificate of appealability.

24 This Order concludes the litigation in this matter. The Clerk shall close the file.

25 **IT IS SO ORDERED.**

26 DATED: July 29, 2011

27   
28 Honorable Janis L. Sammartino  
United States District Judge