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

ALEX RAY CHARFAUROS,
Petitioner,

v.

SCOTT KERNAN, Warden,
Respondent.

Case No. 17-cv-266-BAS-KSC
ORDER:
(1) OVERRULING OBJECTION
[ECF No. 28];
(2) ADOPTING REPORT &
RECOMMENDATION
[ECF No. 27];
(3) DENYING PETITION
[ECF No. 3];
AND
(4) DENYING CERTIFICATE OF
APPEALABILITY

On April 10, 2017, Petitioner Alex R. Charfauros (“Petitioner”), a state prisoner proceeding *pro se*, filed an Amended Petition for a Writ of Habeas Corpus (the “Petition”) pursuant to 28 U.S.C. § 2254, seeking relief from his August 23, 2013 conviction in San Diego Superior Court for, *inter alia*, second degree murder and his resulting sentence of 85 years to life. (ECF No. 3.) On July 17, 2017, Magistrate Judge Karen Crawford issued a Report and Recommendation (R&R), which recommends that this Court deny the Petition in its entirety because Petitioner has failed to show he is entitled to federal habeas relief on any ground. (ECF No. 27.)

1 Petitioner has filed an Objection to the R&R. (ECF No. 28.) For the reasons herein,
2 the Court: (1) overrules Petitioner’s Objection, (2) approves and adopts the R&R in
3 its entirety, (3) denies the Petition, and (4) denies a certificate of appealability.

4 **LEGAL STANDARD**

5 The Court reviews *de novo* those portions of an R&R to which objections are
6 made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or
7 in part, the findings or recommendations made by the magistrate judge.” *Id.* “The
8 statute makes it clear,” however, “that the district judge must review the magistrate
9 judge’s findings and recommendations *de novo if objection is made*, but not
10 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en
11 banc) (emphasis in original); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
12 1226 (D. Ariz. 2003) (concluding that where no objections were filed, the district
13 court had no obligation to review the magistrate judge’s report). “Neither the
14 Constitution nor the statute requires a district judge to review, *de novo*, findings and
15 recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328
16 F.3d at 1121. This legal rule is well-established in the Ninth Circuit and this district.
17 *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005) (“Of course, *de novo*
18 review of a[n] R & R is only required when an objection is made to the R & R.”);
19 *Nelson v. Giurbino*, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopting
20 report in its entirety without review because neither party filed objections to the
21 report despite the opportunity to do so); *see also Nichols v. Logan*, 355 F. Supp. 2d
22 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

23 **ANALYSIS¹**

24 **A. Petitioner Has Failed to Make a Proper Objection to the R&R**

25 Objections to an R&R must be properly made before triggering a district
26

27 ¹ The Court adopts and incorporates the procedural and factual background as
28 well as the applicable standard of review for a federal habeas petition set forth in the
R&R and does not recount those points in this Order. (ECF No. 27 at 2–8.)

1 judge's responsibility to conduct a *de novo* review. *See* Fed. R. Civ. P. 72(b)(3)
2 (“The district judge must determine *de novo* any part of the magistrate judge’s
3 disposition that has been properly objected to.”). At a minimum, objections must be
4 written and specific. *See* Fed. R. Civ. P. 72(b)(2) (“[A] party may serve and file
5 *specific* written objections to the proposed findings and recommendations” of the
6 magistrate judge.) (emphasis added). “Numerous courts have held that a general
7 objection to the entirety of a Magistrate Judge’s R&R has the same effect as a failure
8 to object.” *Alcantara v. McEwen*, No. 12-CV-401, 2013 WL 4517861, at *1 (S.D.
9 Cal. Aug. 15, 2013) (citing cases); *see also Robles v. Beard*, No. 14-cv-1514-BAS-
10 NLS, 2015 WL 7313874, at *1–2 (S.D. Cal. Nov. 20, 2015).

11 In this case, Petitioner’s Objection is insufficient to trigger *de novo* review.
12 Petitioner’s “objection” to the R&R is that he “has demonstrated” and “clearly
13 establishe[d]” error in his state court proceedings. (ECF No. 28 at 1–2.) Although
14 Petitioner reasserts that he is entitled to federal habeas relief on the grounds raised in
15 his Petition, at no point in his Objection does Petitioner identify any particular facts
16 or analysis *in the R&R* to which he objects. (*See generally id.*) Petitioner has thus
17 not raised any valid objections to the R&R. *See Turner v. Tilton*, No. 07-CV-2036-
18 JLB-AJB, 2008 WL 5273526, at *1 (S.D. Cal. Dec. 18, 2008) (Sammartino, J.)
19 (“[H]is objections do not address the substance of the R & R’s findings. Instead, the
20 objections discuss at length the claims made in the petition. Because Petitioner has
21 not made an objection to any specific portion of the report. Therefore, the Court need
22 only satisfy itself that the R & R is not clearly erroneous.”); *see also Grady v. Biter*,
23 No. 13-cv-2479-BAS-MDD, 2016 WL 537175 at *3 (S.D. Cal. Feb. 10, 2016)
24 (“Petitioner’s objections amount to ‘general objections’ that do not address the
25 substance of any specific findings in the Report, which in turn has the same effect as
26 failing to object.”).

27 **B. The R&R Properly Recommends Denial of the Petition**

28 In the absence of any specific objection to an R&R, the clear weight of

1 authority indicates that the Court need only satisfy itself that there is no “clear error”
2 on the face of the record before adopting Judge Crawford’s recommendation. *See*
3 Fed. R. Civ. P. 72(b) Advisory Comm. Notes (1983) (citing *Campbell v. United*
4 *States Dist. Court*, 501 F.2d 5, 7 (9th Cir. 1974)). However, the Court has conducted
5 a *de novo* review of the Petition (ECF No. 3), Respondent’s Answer and the lodgment
6 of the state court record (ECF Nos. 24, 25), the Traverse filed by Petitioner (ECF No.
7 26), and Judge Crawford’s R&R (ECF No. 27). Having conducted a *de novo* review,
8 the Court concludes that Judge Crawford’s recommendation to deny the Petition is
9 sound.

10 As Judge Crawford correctly reasons, Petitioner has failed to show that he is
11 entitled to federal habeas relief on any of the grounds raised in the Petition. First,
12 Petitioner’s challenge to the sufficiency of the evidence underlying his convictions
13 fails because the evidence offered at trial was sufficient for a jury to convict
14 Petitioner. As the R&R correctly observes, the conclusion of the California Court of
15 Appeal on this issue in Petitioner’s direct appeal was not objectively unreasonable
16 such that it should be disregarded by this Court. (ECF No. 27 at 9–14.) Second,
17 Petitioner’s request for habeas relief due to the allegedly wrongful admission of
18 evidence fails because the challenge is procedurally defaulted pursuant to
19 California’s contemporaneous objection rule. (*Id.* at 15–17.) Third, Petitioner’s
20 ineffective assistance of counsel claim fails because he cannot establish prejudice
21 pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), based on his trial
22 counsel’s alleged failure to object to the admission of certain testimony, a
23 determination which the California Court of Appeal also reached. (*Id.* at 17–19.)
24 Finally, Petitioner’s claim for habeas relief due to an allegedly wrongful imposition
25 of a sentence enhancement fails. Petitioner argues that his indictment did not
26 explicitly allege that the attempted murders of police officers were willful, deliberate
27 and premeditated. However, in reference to the California Court of Appeal decision
28 which also addressed this claim, the R&R soundly observes that the indictment’s

1 failure to charge on this basis does not entitle Petitioner to relief because the defense
2 proffered a jury instruction on willful, deliberate and premeditated murder at trial,
3 which provided notice to Petitioner. (*Id.* at 19–21.) Accordingly, this Court
4 concludes that the R&R’s recommendation to deny the Petition is proper.


5 **C. The Court Declines to Issue a Certificate of Appealability**

6 Pursuant to Rule 11 of the Rules following 28 U.S.C. § 2254, a district court
7 “must issue or deny a certificate of appealability when it enters a final order adverse
8 to the applicant.” The district court may issue a certificate of appealability if the
9 petitioner “has made a substantial showing of the denial of a constitutional right.” 28
10 U.S.C. §2253(c)(2). To meet this threshold showing, a petitioner must show that: (1)
11 the issues are debatable among jurists of reason, (2) that a court could resolve the
12 issues in a different manner, or (3) that the questions are adequate to deserve
13 encouragement to proceed further. *Maciel v. Cate*, 731 F.3d 928, 932 (9th Cir. 2013).
14 Based on a review of the Petition, the record, and the R&R (ECF Nos. 3, 24–27), the
15 Court finds that reasonable jurists would not find the Court’s assessment of the claims
16 in the Petition debatable or wrong. Accordingly, the Court denies Petitioner a
17 certificate of appealability.

18 **CONCLUSION & ORDER**

19 After considering Petitioner’s Objection and conducting a *de novo* review of
20 the R&R and the Petition, the Court hereby: (1) **OVERRULES** Petitioner’s
21 generalized Objection (ECF No. 28); (2) **APPROVES** and **ADOPTS** the R&R in its
22 entirety (ECF No. 27); (3) **DENIES** the Petition (ECF No. 3); and (4) **DENIES** a
23 certificate of appealability.

24 **IT IS SO ORDERED.**


25 **Hon. Cynthia Bashant**
26 **United States District Judge**

27 **DATED: September 7, 2018**

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