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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JEMERE GUILLORY,

12 Petitioner,

13 v.

14 KELLY SANTORO, Warden,

15 Respondent.
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Case No.: 17cv2084-CAB-BGS

**ORDER ADOPTING REPORT AND
RECOMMENDATION[Doc. No. 19];
REJECTING PETITIONER’S
OBJECTIONS [Doc. No. 25];
DENYING PETITION [Doc. No. 1];
AND DENYING CERTIFICATE OF
APPEALABILITY**

18 On October 5, 2017, Petitioner Jemere Guillory (“Petitioner”), a state prisoner
19 proceeding pro se and in forma pauperis, filed a Petition for Writ of Habeas Corpus
20 pursuant to 28 U.S.C. § 2254, [Doc. No. 1.] On February 12, 2018, Respondent filed an
21 answer to the petition and lodged the state court record. [Doc. Nos. 13, 14.] On March
22 22, 2018, Petitioner filed a traverse. [Doc. No. 17.]

23 On December 5, 2018, Magistrate Judge Bernard G. Skomal issued a Report and
24 Recommendation (“Report”), recommending that the Court deny the Petition. [Doc. No.
25 19.] On February 14, 2019, Petitioner filed objections to the Report. [Doc. No. 25.]

26 Following *de novo* review of Petitioner’s claims, the Court finds the Report to be
27 thorough, complete, and an accurate analysis of the legal issues presented in the petition.
28 For the reasons explained below, the Court: (1) adopts the Report in full; (2) rejects

1 Petitioner’s objections; (3) denies the Petition for Writ of Habeas Corpus; and (4) denies
2 a certificate of appealability.

3 4 **BACKGROUND**

5 6 **I. Factual Background**

7 The Report contains an accurate recital of the facts as determined by the California
8 Court of Appeal, and the Court fully adopts the Report’s statement of facts. As Judge
9 Skomal correctly noted, the Court presumes state court findings of fact to be correct.
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11 **II. State Procedural Background**

12 The Report contains a complete and accurate summary of the state court
13 proceedings, and the Court fully adopts the Report’s statement of state procedural
14 background.
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16 **III. Federal Procedural Background**

17 On October 5, 2017, Petitioner filed a Petition for Writ of Habeas Corpus
18 challenging his San Diego County Superior Court conviction. [Doc. No. 1.] On February
19 12, 2018, Respondent filed an Answer to the Petition, and lodged portions of the state
20 court record. [Doc. Nos. 13 and 14.] On March 22, 2018, Petitioner filed a Traverse.
21 [Doc. No. 17.]

22 On December 5, 2018, Magistrate Judge Bernard G. Skomal issued a Report
23 recommending that the petition be denied. [Doc. No. 19.] On February 14, 2019,
24 Petitioner filed Objections to the Report. [Doc. No. 25.] In his filing, Petitioner objects to
25 the magistrate judge’s “factual and legal conclusions” regarding claims 1 and 3. [Doc.
26 No. 25 at 1.] Petitioner also requests an evidentiary hearing. [Doc. No. 25 at 3.] Because
27 Petitioner has objected to the findings regarding two out of the three claims, the Court
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1 reviews the Report *de novo*. 28 U.S.C. § 636(b)(1)(C); *Holder v. Holder*, 392 F.3d 1009,
2 1022 (9th Cir. 2004).

4 DISCUSSION

6 I. Legal Standard

7 The Report sets forth the correct standard of review for a petition for writ of habeas
8 corpus. Under 28 U.S.C. § 2254(d):

9 (d) An application for a writ of habeas corpus on behalf of a person in
10 custody pursuant to the judgment of a State court shall not be granted with
11 respect to any claim that was adjudicated on the merits in State court
12 proceedings unless the adjudication of the claim-

12 (1) resulted in a decision that was contrary to, or involved an unreasonable
13 application of, clearly established Federal law, as determined by the
14 Supreme Court of the United States; or

14 (2) resulted in a decision that was based on an unreasonable determination of
15 the facts in light of the evidence presented in the State court proceeding.

15 28 U.S.C. § 2254(d); *Williams v. Taylor*, 529 U.S. 362, 403, 412-13 (2000).

16 Under § 2254(d)(1), a state court's decision is “contrary to” clearly established
17 federal law if the state court (1) “arrives at a conclusion opposite to that reached by this
18 Court on a question of law” or (2) “confronts facts that are materially indistinguishable
19 from a relevant Supreme Court precedent and arrives at a result opposite to ours.”

20 *Williams*, 529 U.S. at 405. A state court's decision is an “unreasonable application” if the
21 application was “objectively unreasonable.” *Lockyer v. Andrade*, 538 U.S. 63, 75-76
22 (2003).

23 Under § 2254(d)(2), habeas relief is not available due to a state court's
24 “unreasonable determination of the facts” unless the underlying factual determinations
25 were objectively unreasonable. *See Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003); *see*
26 *also Rice v. Collins*, 546 U.S. 333, 341-42 (2006) (the fact that “[r]easonable minds
27 reviewing the record might disagree” does not render a decision objectively
28 unreasonable).

1 **II. Analysis of Petitioner’s Claims.**

2 Petitioner raises three claims in his Petition: (1) his Sixth Amendment right to a
3 public trial was violated when his family was allegedly excluded from the courtroom
4 during *voir dire*; (2) his Fourth Amendment rights were violated when the police
5 unlawfully searched his home and used the evidence during trial; and (3) there was
6 insufficient evidence of a disfiguring injury to support his mayhem conviction. [Doc. No.
7 1 at 6-8.]

8 A. Claim One: Sixth Amendment Right to Public Trial.

9 Petitioner argues he was denied his Sixth Amendment right to a public trial
10 because his family members were excluded from the courtroom during *voir dire*. [Doc.
11 No. 1 at 14-18.] As Magistrate Judge Skomal correctly noted, this claim is procedurally
12 barred because the state court decision on this claim relied on an independent and
13 adequate state procedural ground and Petitioner failed to show cause for the default.
14 [Doc. No. 19 at 13.] In his objections, Petitioner merely states that he “objects to the
15 court’s analysis and conclusions regarding procedural default,” but does not explain why
16 the magistrate judge’s analysis is wrong. [Doc. No. 25 at 2.] This Court has made a *de*
17 *novo* review and finds that Petitioner’s claim is procedurally barred from federal habeas
18 review.¹

19 B. Claim Two: Fourth Amendment Rights.

20 In his Petition, Petitioner argued the search of his residence and trial court’s denial
21 of suppression of the evidence obtained in that search violated the Fourth Amendment.
22 [Doc. No. 1 at 19-28.] However, in his Traverse, Petitioner admitted that the claim was
23 barred by *Stone v. Powell*, 428 U.S. 465 (1976). As a result, Magistrate Judge Skomal
24 recommended that habeas relief be denied on this claim. Petitioner does not object to this
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28 ¹ In his Traverse, Petitioner requests an evidentiary hearing with regard to claim one. [Doc. No. 17 at 2.]
However, given that the claim is procedurally barred, the request for an evidentiary hearing is **DENIED**.

1 finding. This Court has made a *de novo* review and finds that Petitioner’s claim should
2 be denied.

3 C. Insufficient evidence of Mayhem.

4 Petitioner argues the evidence was not sufficient to support his conviction for
5 mayhem as to the permanent disfigurement element because the testimony concerning the
6 victim’s ongoing problems with his leg at the time of trial should be interpreted as being
7 related to things other than being shot. [Doc. No. 1 at 25 - 28.] However, as pointed out
8 by Magistrate Judge Skomal, while there was some conflicting evidence on this issue,
9 there was sufficient evidence presented upon which the jury could have based its
10 conclusion that the victim’s injury from the gunshot persisted for almost two years.
11 [Doc. No. 19 at 19.] Thus, Petitioner has not met his burden under *Jackson v. Virginia*
12 because “viewing the evidence in the light most favorable to the prosecution, any rational
13 trier of fact could have found” the permanent disfigurement element “beyond a
14 reasonable doubt.” 443 U.S. 307, 319 (1979). In his objections, Petitioner merely states
15 that he “objects to the courts conclusion as to the claim,” but does not explain why the
16 magistrate judge’s analysis is wrong. [Doc. No. 25 at 3.] This Court has made a *de novo*
17 review and finds that Petitioner’s claim should be denied.

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19 **CERTIFICATE OF APPEALABILITY**

20 A petitioner complaining of detention arising from state court proceedings must
21 obtain a certificate of appealability to file an appeal of the final order in a federal habeas
22 proceeding. 28 U.S.C. § 2253(c)(1)(A) (2007). The district court may issue a certificate
23 of appealability if the petitioner “has made a substantial showing of the denial of a
24 constitutional right.” Id. § 2253(c)(2). To make a “substantial showing,” the petitioner
25 must “demonstrat[e] that ‘reasonable jurists would find the district court's assessment of
26 the constitutional claims debatable[.]’ ” *Beatty v. Stewart*, 303 F.3d 975, 984 (9th
27 Cir.2002) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Petitioner has not
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1 made a “substantial showing” as to any of the claims raised by his petition, and thus the
2 Court *sua sponte* denies a certificate of appealability.

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4 **CONCLUSION**

5 For the reasons set forth above, the Court hereby: (1) **ADOPTS** the Report in full;
6 (2) **REJECTS** Petitioner's objections; (3) **DENIES** the Petition for Writ of Habeas
7 Corpus; and (4) **DENIES** a certificate of appealability.

8 **IT IS SO ORDERED.**

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10 Dated: February 25, 2019



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12 Hon. Cathy Ann Bencivengo
13 United States District Judge
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