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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GEORGE W. GIBBS,

Petitioner,

vs.

ROBERT LeGRAND, *et al.*,

Respondents.

Case No. 2:11-cv-00750-KJD-CWH

**ORDER**

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner represented by counsel.

By order filed July 23, 2012, this Court granted respondents' motion and dismissed this action with prejudice as untimely. (ECF No. 47). Judgment was entered on July 24, 2012. (ECF No. 48). Petitioner appealed. (ECF No. 49). On September 17, 2014, the United States Court of Appeals for the Ninth Circuit filed a memorandum opinion reversing this Court's dismissal of the action. (ECF No. 57). The Court of Appeals reversed this Court's order dismissing the petition as untimely, and remanded for consideration of the petition on the merits. (*Id.*). By order filed April 10, 2015, this Court directed respondents to file an answer addressing the merit of each ground of the amended petition. (ECF No. 63).

Respondents have filed a motion seeking a ruling on the Fourth Amendment claim in Ground 1 of the amended petition. (ECF No. 65). Petitioner has filed no opposition to respondents' motion. Ground 1 of the first amended petition alleges that petitioner's Fourth Amendment rights

1 were violated by a warrantless search and seizure of items found during a search of petitioner's  
2 residence. (ECF No. 28, at pp. 10-12). Respondents assert that Ground 1 of the amended petition is  
3 barred by the decision in *Stone v. Powell*, 428 U.S. 465 (1976).

4         Where a state has provided a defendant with a full and fair opportunity to litigate a Fourth  
5 Amendment claim, "a state prisoner may not be granted federal habeas corpus relief on the ground  
6 that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Stone v.*  
7 *Powell*, 428 U.S. 465, 495 (1976); *see also Kuhlmann v. Wilson*, 477 U.S. 436, 446-47 (1986). The  
8 Supreme Court has determined that excluding Fourth Amendment claims from habeas corpus  
9 review created no danger that the courts would deny a safeguard against compelling an innocent  
10 man to suffer an unconstitutional loss of liberty because a convicted defendant seeking review of a  
11 Fourth Amendment claim on collateral review is "usually asking society to redetermine an issue that  
12 has no bearing on the basic justice of his incarceration." *Kuhlmann*, 477 U.S. at 447.

13         Ground 1 of the first amended petition alleges that petitioner's Fourth Amendment rights  
14 were violated by a warrantless search and seizure of items found during a search of petitioner's  
15 residence. (ECF No. 28, at pp. 10-12). It is clear from the record that petitioner was given a full  
16 and fair opportunity to litigate his Fourth Amendment claim before the state courts. *See Terrovona*  
17 *v. Kinchloe*, 912 F.2d 1176 (9<sup>th</sup> Cir. 1990); *Abell v. Raines*, 640 F.2d 1085 (9<sup>th</sup> Cir. 1981).  
18 Specifically, petitioner filed two motions to suppress the evidence found during the search of his  
19 residence in which he alleged violation of his Fourth Amendment search and seizure rights.  
20 (Exhibits 11 & 16). Petitioner's motions to suppress evidence were denied by the state district  
21 court. (Exhibits 15 & 19). Petitioner also raised the Fourth Amendment claim in his opening brief  
22 on direct appeal to the Nevada Supreme Court. (Exhibit 30). The Nevada Supreme Court  
23 considered and rejected petitioner's Fourth Amendment claim. (Exhibit 34). The Fourth  
24 Amendment claim raised in Ground 1 of the federal habeas petition was exhaustively litigated in the  
25 state courts below. Because petitioner had the opportunity to fully and fairly litigate the Fourth  
26 Amendment claim that he now presents in Ground 1 of his first amended petition, this Court is  
27 precluded from reviewing that claim and it will be dismissed.

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