

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CHARLES MOMAH,

10 Petitioner,

11 v.

12 JEFFREY A UTTECHT,

13 Respondent.
14

CASE NO. C15-0536 JCC

ORDER AMENDING JUDGMENT

15 This matter comes before the Court on Petitioner's motion to alter or amend judgment
16 (Dkt. No. 41). Petitioner moves the Court to amend its previous order in which it declined to
17 issue a certificate of appealability. (Dkt. No. 39 at 12–13.) For the reasons explained herein, the
18 Court finds oral argument unnecessary and hereby GRANTS Petitioner's motion.

19 **I. BACKGROUND**

20 Among Petitioner's habeas claims was his argument that the trial court closed the
21 courtroom during most of one day of voir dire in violation of his Sixth Amendment right to a
22 public trial. (Dkt. No. 37 at 6–8.) In its previous order, the Court agreed that the trial court
23 misapplied the closure analysis established in *Waller v. Georgia*, 467 U.S. 39, 47 (1984), but
24 denied Petitioner's claim. (Dkt. No. 39 at 10–12.) The Court held that because Petitioner did not
25 object to the closure, he waived his Sixth Amendment right to a public trial. (*Id.*) The Court also
26 declined to issue a certificate of appealability on this or any other claim. (*Id.* at 13–14.)

1 Petitioner now argues that the Court’s analysis as to his closure claim was either incorrect
2 or subject to dispute, and therefore this claim merits a certificate of appealability.

3 **II. DISCUSSION**

4 Petitioner argues that it is federal criminal procedure, not the Sixth Amendment, which
5 requires a defendant to object to a closure or else waive his public trial right. Petitioner bases this
6 argument on somewhat ambiguous precedent, *e.g.*, *Levine v. United States*, 362 U.S. 610, 618-19
7 (1960), and the fact that federal courts use plain error analysis for courtroom closures to which a
8 defendant did not object. *E.g.*, *United States v. Negron-Sostre*, 790 F.3d 295, 306 (1st Cir. 2015).
9 Petitioner argues that if the Sixth Amendment requires a defendant to object to a closure, then
10 failing to do so could never be excused.

11 Petitioner further argues that if the objection requirement actually arises from federal
12 criminal procedure rather than the constitution, then he did not waive his public trial right by
13 failing to object. That is because, according to Petitioner, defendants in state trial court are not
14 required to comply with federal procedural rules in order to preserve their habeas claims.
15 Therefore, since the trial court misapplied the closure analysis, it allegedly violated Petitioner’s
16 public trial right regardless of his failure to object, since this failure supposedly only matters
17 under federal criminal procedure.

18 But in *Waller* itself, wherein the Supreme Court established the proper analysis for
19 courtroom closure, the Court explicitly stated that a trial court need only conduct this analysis
20 when the closure is “over the objections of the accused.” 467 U.S. at 47. This holding was in
21 direct response to a state court trial. *Id.* at 41–43. Furthermore, it is apparent that other
22 constitutional rights may be waived during a criminal trial in state court. For example, in
23 *Campbell v. Blodgett*, the Ninth Circuit held on habeas review that a defendant in state court
24 could waive his constitutional right to be present at every stage of trial. 978 F.2d 1502, 1511 (9th
25 Cir. 1992). The court in *Campbell* also found that “[t]he most basic rights of criminal defendants
26 are similarly subject to waiver,” the public trial right among them. *Id.* at 1508.

1 Petitioner has not pointed to a single Supreme Court opinion holding that a defendant’s
2 public trial right was violated even when the defendant did not object to the closure. *See*
3 *Williams v. Taylor*, 529 U.S. 362, 379–81 (2000) (holding that a habeas petitioner must
4 demonstrate that his state court adjudication resulted in a decision contrary to Supreme Court
5 precedent). The Court is therefore confident that Petitioner has failed to establish that the trial
6 court, in closing the courtroom, made a decision that was contrary to or unreasonably applied
7 federal law. 28 U.S.C. § 2254(d).

8 Nonetheless, the Court agrees with Petitioner that it is unclear whether the need to object
9 to a closure is a constitutional requirement. If it is not, then Petitioner’s argument that a state
10 court defendant should not also have to comply with federal criminal procedure to preserve his
11 habeas claims deserves consideration. Respondent argues that the Supreme Court has already
12 settled this issue, but the only case in which the Court squarely addressed a defendant’s failure to
13 object to a closure began in federal court. *Levine*, 362 U.S. at 611–12.

14 To merit the issuance of a certificate of appealability, “obviously the petitioner need not
15 show that he should prevail on the merits. He has already failed in that endeavor.” *Barefoot v.*
16 *Estelle*, 463 U.S. 880, 893 n.4 (1983). Instead, a petitioner need only show that “jurists of reason
17 could disagree with the district court’s resolution of his constitutional claims or that jurists could
18 conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-*
19 *El v. Cockrell*, 537 U.S. 322, 327 (2003).

20 The Court finds that Petitioner has met this standard. The question of whether Petitioner
21 waived his public trial right by failing to object to a closure in state court is an issue that deserves
22 encouragement to proceed further.

23 **III. CONCLUSION**

24 For the forgoing reasons, Petitioner’s motion to amend (Dkt. No. 41) is GRANTED. The
25 Court ISSUES a certificate of appealability for Petitioner’s closure claim.

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1 DATED this 14th day of May 2016.

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8 John C. Coughenour
9 UNITED STATES DISTRICT JUDGE
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