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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ADRIAN JOSEPH MAUPIN,

9 Petitioner,

10 v.

11 PAT GLEBE,

12 Respondent.

CASE NO. C15-5431 BHS-JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 19), and
15 Petitioner Adrian Joseph Maupin’s (“Maupin”) objections to the R&R (Dkt. 20).

16 On November 13, 2015, Judge Creatura issued the R&R recommending the Court
17 deny Maupin’s petition on the merits of ground one, deny Maupin’s petition as
18 procedurally barred as to ground two, and deny a certificate of appealability. Dkt. 19.

19 On November 25, 2015, Maupin filed objections. Dkt. 20.

20 The district judge must determine de novo any part of the magistrate judge’s
21 disposition that has been properly objected to. The district judge may accept, reject, or
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1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Maupin fails to show that Judge Creatura's conclusions are erroneous.
4 With regard to Maupin's exhausted claim that his admission was improperly admitted,
5 Maupin fails to show that the state court opinion is an unreasonable application of
6 Supreme Court law. In fact, the circumstances of Maupin's confession do not rise to the
7 level of egregiousness that the Supreme Court has held to be involuntary. *See* Dkt. 19 at
8 12 (collecting cases). In light of this precedent, the Court adopts Judge Creatura's
9 conclusion that the state court opinion is not an unreasonable application of federal law.

10 With regard to Maupin's second ground, Judge Creatura concluded that it was
11 unexhausted and procedurally barred. Based on the objections, it is unclear whether
12 Maupin asserts a claim based on the improper admission of victim hearsay statements or
13 ineffective assistance of appellate counsel for failing to appeal the admission of these
14 statements. Dkt. 20 at 4-17. Regardless, Maupin fails to show that either claim was
15 properly presented to the state court as a federal claim. As such, Maupin must show
16 cause and prejudice before the Court may address the merits of the claim. Maupin fails
17 to show either element. Maupin fails to show that any event outside of his control
18 prevented him from properly presenting this claim. Maupin also fails to show sufficient
19 prejudice such that upholding his conviction is a fundamental miscarriage of justice.
20 Therefore, the Court adopts the R&R on this issue.

21 Finally, Maupin requests that the Court grant a certificate of appealability.
22 Maupin, however, fails to show that reasonable jurists would debate this Court's

1 resolution of Maupin's claims. Therefore, the Court having considered the R&R,
2 Maupin's objections, and the remaining record, does hereby find and order as follows:

- 3 (1) The R&R is **ADOPTED**;
- 4 (2) Maupin's petition is **DENIED**;
- 5 (3) The Court **DENIES** a certificate of appealability; and
- 6 (4) This action is **DISMISSED**.

7 Dated this 20th day of January, 2016.

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BENJAMIN H. SETTLE
United States District Judge