

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 STEVEN CRAIG POWELL,

9 Petitioner,

10 v.

11 MIKE OBENLAND,

12 Defendant.

CASE NO. C15-5761 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 14), and
15 Petitioner Steven Powell’s (“Powell”) objections to the R&R (Dkt. 15).

16 On November 3, 2015, Powell filed a petition for a writ of habeas corpus under 28
17 U.S.C. § 2254. Dkt. 4. Powell seeks relief from his jury conviction of twelve counts of
18 voyeurism and one count of second-degree possession of depictions of a minor engaged
19 in sexually explicit conduct. *Id.* at 2. Powell presents four grounds for habeas relief, all
20 of which are based on the Fourth Amendment. *See id.* at 5–13.

21 On February 18, 2016, Judge Strombom issued an R&R recommending the Court
22 deny the petition as barred by *Stone v. Powell*, 428 U.S. 465 (1976). Dkt. 14 at 8–11.

1 | *Stone* provides that federal habeas relief cannot be granted on Fourth Amendment claims
2 | “where the State has provided an opportunity for full and fair litigation” of such claims.
3 | 428 U.S. at 494. Judge Strombom also recommended denying the issuance of a
4 | certificate of appealability. Dkt. 14 at 11. On March 9, 2016, Powell filed objections.
5 | Dkt. 15.

6 | Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge’s
7 | recommended disposition. Rule 72(b) provides:

8 | The district judge must determine de novo any part of the magistrate
9 | judge’s disposition that has been properly objected to. The district judge
10 | may accept, reject, or modify the recommended disposition; receive further
11 | evidence; or return the matter to the magistrate judge with instructions.

12 | Fed. R. Civ. P. 72(b)(3).

13 | Powell objects to Judge Strombom’s conclusion that *Stone* bars his Fourth
14 | Amendment claims. Dkt. 15. Powell argues his Fourth Amendment claims did not
15 | receive full and fair consideration because (1) the state courts adjudicated his claims on
16 | faulty grounds and reached decisions that were contrary to federal law, and (2) his
17 | counsel did not defend him from the bias of Pierce County courts by seeking to change
18 | the venue. *Id.* at 12, 16, 18–21.

19 | Powell’s objections do not demonstrate that Judge Strombom’s conclusion was
20 | erroneous. With respect to Powell’s first argument, the proper inquiry under *Stone* is
21 | whether Powell had the opportunity to litigate his Fourth Amendment claims, not
22 | whether whether his claims were correctly decided. *Ortiz-Sandoval v. Gomez*, 81 F.3d
891, 899 (9th Cir. 1996). As Judge Strombom discussed, the record shows that Powell

1 had the opportunity to litigate his Fourth Amendment claims and that he did so. *See* Dkt.
2 14 at 9–11; *see also* *Moormann v. Schriro*, 426 F.3d 1044, 1053 (9th Cir. 2005). As for
3 his second argument, Powell has failed to show that he properly presented a claim for
4 ineffective assistance of counsel or that he has exhausted such a claim.

5 Therefore, the Court having considered the R&R, Powell’s objections, and the
6 remaining record, does hereby find and order as follows:

- 7 (1) The R&R is **ADOPTED**;
- 8 (2) Powell’s habeas petition is **DENIED**;
- 9 (3) A certificate of appealability is **DENIED**; and
- 10 (4) This action is **DISMISSED**.

11 Dated this 19th day of April, 2016.

12
13 

14

BENJAMIN H. SETTLE
United States District Judge

15
16
17
18
19
20
21
22