

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

OCT 25 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL ALLEN CHANNEL, Sr.,

No. 19-15693

Petitioner-Appellant,

D.C. No. 2:18-cv-01432-JAS-LAB  
District of Arizona,  
Phoenix

v.

CHARLES RYAN; ATTORNEY  
GENERAL FOR THE STATE OF  
ARIZONA,

ORDER

Respondents-Appellees.

Before: O'SCANLAIN and RAWLINSON, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

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**IN THE UNITED STATES DISTRICT COURT**  
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**FOR THE DISTRICT OF ARIZONA**  
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9 Michael Allen Channel, Sr.,

**NO. CV-18-01432-PHX-JAS (LAB)**

10 Petitioner,

**JUDGMENT**

11 v.

12 Charles Ryan, et al.,

13 Respondents.

14  
15 **Decision by Court.** This action came for consideration before the Court. The  
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED adopting the Report and Recommendation  
18 of the Magistrate Judge as the order of this court; defendant's motion pursuant to 28  
19 U.S.C. 2255 to vacate, set aside or correct a sentence is denied and the civil action  
20 opened in connection is hereby dismissed with prejudice.

21 Brian D. Karth  
22 District Court Executive/Clerk of Court

23 March 15, 2019

24 By s/ B Cortez  
25 Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

9 Michael Allen Channel, Sr., ) CV 18-01432-PHX-JAS (LAB)  
10 Petitioner, )  
11 vs. ) **REPORT AND RECOMMENDATION**  
12 Charles Ryan; et al., )  
13 Respondents. )  
14

15 Pending before the court is a petition for writ of habeas corpus filed in this court on May  
16 9, 2018, by Michael Allen Channel, Sr., an inmate currently confined in the Arizona State  
17 Prison Complex in Tucson, Arizona. (Doc. 1)

18 Pursuant to the Rules of Practice of this court, the matter was referred to Magistrate  
19 Judge Bowman for report and recommendation. LRCiv 72.2(a)(2).

20 The Magistrate Judge recommends that the District Court, after its independent review  
21 of the record, enter an order denying the petition. Channel's claims are, for the most part, vague  
22 and conclusory. Those claims that the court can understand are meritless.

23  
24 Summary of the Case

25 On July 10, 2013, Phoenix police responding to a 911 call involving a disturbance  
26 encountered Channel sitting in front of his apartment. (Doc. 24-1, p. 157) Channel admitted  
27 he owned a weapon and told officers where it was located in his apartment. *Id.* Channel's wife  
28 allowed police to enter and retrieve the loaded gun. *Id.*

1       At trial, the parties stipulated that Channel had a prior felony conviction and was  
2 prohibited from legally possessing a firearm. (Doc. 24-1, p. 158) Channel tried to elicit  
3 testimony showing that his wife and daughter had been threatened, but the trial court ruled that  
4 such questioning did not establish “imminent” injury. *Id.* Channel was convicted of one count  
5 of Misconduct Involving Weapons. (Doc. 24-1, p. 75) On December 4, 2015, he was sentenced  
6 to a 10-year term of imprisonment. *Id.*

7       On direct appeal, Channel argued that the trial court abused its discretion by failing to  
8 give the jury a justification/necessity instruction and failing to grant a motion for new trial after  
9 an evidentiary hearing established that Channel had been previously threatened by an angry  
10 mob and needed the weapon to protect his family. (Doc. 24-1, p. 87) On April 27, 2017, the  
11 Arizona Court of Appeals affirmed his conviction and sentence. (Doc. 24-1, pp. 156-162)

12       Previously, on May 12, 2016, Channel filed notice of post-conviction relief. (Doc. 24-1,  
13 p. 164) The trial court dismissed the notice on the defendant’s motion as premature. (Doc. 24-  
14 1, pp. 171-174)

15       At the conclusion of his direct appeal, Channel filed notice of post-conviction relief on  
16 May 12, 2017 and May 15, 2017, which the trial court consolidated into a single notice. (Doc.  
17 24-1, pp. 176, 180, 184) Channel filed his petition pro se on June 8, 2017. (Doc. 24-1, p. 187)  
18 His petition is prolix, confusing, and entirely conclusory. (Doc. 24-1, pp. 187-207) Channel  
19 argued generally “that the officers provided false testimony, that all the officers were not  
20 interviewed or called to testify at trial, that bullets were not impounded, that his residence was  
21 not photographed, that he was not read his *Miranda* Rights, that a warrant should have been  
22 obtained for the search of his residence, that his statements were obtained under duress, that the  
23 complaint against him was not filed timely, and that the State[] failed to provide exculpatory  
24 evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), but never specified how these  
25 complaints could be, much less were, substantiated.” (Doc. 24-5, p. 32) The trial court denied  
26 the petition on October 14, 2017. *Id.*

27       Channel filed a petition for review on October 27, 2017 and December 7, 2017. (Doc.  
28 24-5, pp. 34, 60) The Arizona Court of Appeal granted review but denied relief on April 17,

1 2018. (Doc. 24-5, p. 93) The court explained simply that the superior court's prior ruling was  
 2 not an abuse of discretion. (Doc. 24-5, p. 94) The Arizona Supreme Court denied Channel's  
 3 petition for review on August 24, 2018. (Doc. 24-5, p. 109)

4 On May 9, 2018, Channel filed in this court a petition for writ of habeas corpus pursuant  
 5 to 28 U.S.C. § 2254. (Doc. 1) He filed an "Opening Brief" on June 11, 2018. (Doc. 7) He  
 6 claims (a) his *Miranda* rights were violated when he was arrested, (b) Sergeant Montoya  
 7 questioned him illegally without *Miranda*, (c) Officer Guilford "violated operations orders,"  
 8 (d) the complaint was untimely, (e) "A.R.S. Rule (a) and 5.1(b), (c) was violated," (f) "the seven  
 9 elements of jurisdiction" were not answered on the record, (g) counsel was not competent, (h)  
 10 the trial judge had a conflict of interest, (i) "Channel's due process rights or civil rights" were  
 11 violated, (j) "Channel's Amendment rights" were violated, (k) "judicial misconduct" occurred,  
 12 (l) the court of appeals provided improper review, (m) "conspiracy against rights" pursuant to  
 13 18 U.S.C.A. § 241 is continuing, (n) "deprivation of civil rights under color of law" pursuant  
 14 to 18 U.S.C. § 242 is continuing, (o) "the seven elements of jurisdiction" were not proven but  
 15 might be on this court's records, (p) "Article II declaration of rights § 24 and §30 of Arizona  
 16 Constitution" were violated, and (q) his waiver of preliminary hearing is without a signature.  
 17 (Doc. 7, pp. 2-3) Channel's petition is prolix, confusing, and entirely conclusory. (Doc. 1);  
 18 (Doc. 7) Channel asserts that he presented all of his claims to the Arizona Court of Appeals in  
 19 his first PCR petition. (Doc. 1, p. 6)

20 On November 15, 2018, the respondents filed an answer. (Doc. 24) They argue  
 21 "Channel's claims are not cognizable, procedurally defaulted, waived and abandoned as  
 22 conclusory assertions, or meritless." (Doc. 24, p. 2)

23 Channel filed a reply on November 28, 2018. (Doc. 28)

24

### 25 Discussion

26 The writ of habeas corpus affords relief to persons in custody in violation of the  
 27 Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). If the petitioner is  
 28

1 in custody pursuant to the judgment of a state court, the writ will not be granted unless prior  
 2 adjudication of the claim –

3       (1) resulted in a decision that was contrary to, or involved an unreasonable  
 4 application of, clearly established Federal law, as determined by the Supreme  
 5 Court of the United States; or  
 6       (2) resulted in a decision that was based on an unreasonable determination of the  
 7 facts in light of the evidence presented in the State court proceeding.

8 28 U.S.C. § 2254(d). The petitioner must shoulder an additional burden if the state court made  
 9 findings of fact.

10       In a proceeding instituted by an application for a writ of habeas corpus by a  
 11 person in custody pursuant to the judgment of a State court, a determination of  
 12 a factual issue made by a State court shall be presumed to be correct. The  
 13 applicant shall have the burden of rebutting the presumption of correctness by  
 14 clear and convincing evidence.

15       28 U.S.C.A. § 2254 (e)(1).

16        “[The] standard is intentionally difficult to meet.” *Woods v. Donald*, 135 S.Ct. 1372,  
 17 1376 (2015). “[C]learly established Federal law” for purposes of § 2254(d)(1) includes only  
 18 the holdings, as opposed to the dicta, of th[e] [Supreme] Court’s decisions.” *Id.*

19       A decision is “contrary to” Supreme Court precedent if that Court already confronted  
 20 “the specific question presented in this case” and reached a different result. *Woods*, 135 S.Ct.  
 21 at 1377. A decision is an “unreasonable application of” Supreme Court precedent if it is  
 22 “objectively unreasonable, not merely wrong; even clear error will not suffice.” *Id.* at 1376.  
 23 “To satisfy this high bar, a habeas petitioner is required to show that the state court’s ruling on  
 24 the claim being presented in federal court was so lacking in justification that there was an error  
 25 well understood and comprehended in existing law beyond any possibility for fairminded  
 26 disagreement.” *Id.* (punctuation modified)

27       If the highest state court fails to explain its decision, this court looks to the last reasoned  
 28 state court decision. *See Brown v. Palmateer*, 379 F.3d 1089, 1092 (9<sup>th</sup> Cir. 2004).

29       Federal habeas review, however, is limited to those claims for which the petitioner has  
 30 already sought redress in the state courts. This so-called “exhaustion rule” reads in pertinent  
 31 part as follows:

1 An application for a writ of habeas corpus on behalf of a person in custody  
 2 pursuant to the judgment of a State court shall not be granted unless it appears  
 3 that – (A) the applicant has exhausted the remedies available in the courts of the  
 4 State. . . .

5 28 U.S.C. § 2254(b)(1)(A).

6 To be properly exhausted, a claim must be “fairly presented” to the state courts. *Weaver*  
 7 *v. Thompson*, 197 F.3d 359, 364 (9<sup>th</sup> Cir. 1999). In other words, the state courts must be  
 8 apprised of the issue and given the first opportunity to rule on the merits. *Id.* “The state courts  
 9 have been given a sufficient opportunity to hear an issue when the petitioner has presented the  
 10 state court with the issue’s factual and legal basis.” *Id.*

11 In addition, the petitioner must explicitly alert the state court that he is raising a *federal*  
 12 constitutional claim. *Casey v. Moore*, 386 F.3d 896, 910-11 (9<sup>th</sup> Cir. 2004), *cert. denied*, 545  
 13 U.S. 1146 (2005). The petitioner must make the federal basis of the claim explicit either by  
 14 citing specific provisions of federal law or federal case law, even if the federal basis of a claim  
 15 is “self-evident,” *Gatlin v. Madding*, 189 F.3d 882, 888 (9<sup>th</sup> Cir. 1999), *cert. denied*, 528 U.S.  
 16 1087 (2000), or by citing state cases that explicitly analyze the same federal constitutional  
 17 claim, *Peterson v. Lampert*, 319 F.3d 1153, 1158 (9<sup>th</sup> Cir. 2003) (en banc).

18 If the petitioner is in custody pursuant to a judgment imposed by the State of Arizona,  
 19 he must present his claims to the Arizona Court of Appeals for review. *Castillo v. McFadden*,  
 20 399 F.3d 993, 998 (9<sup>th</sup> Cir. 2005), *cert. denied*, 546 U.S. 818 (2005); *Swoopes v. Sublett*, 196  
 21 F.3d 1008 (9<sup>th</sup> Cir. 1999), *cert. denied*, 529 U.S. 1124 (2000). If state remedies have not been  
 22 properly exhausted, the petition may not be granted and ordinarily should be dismissed without  
 23 prejudice. *See Johnson v. Lewis*, 929 F.2d 460, 463 (9<sup>th</sup> Cir. 1991). In the alternative, the court  
 24 has the authority to deny on the merits rather than dismiss for failure to properly exhaust. 28  
 25 U.S.C. § 2254(b)(2).

26 A claim is “procedurally defaulted” if the state court declined to address the claim on the  
 27 merits for procedural reasons. *Franklin v. Johnson*, 290 F.3d 1223, 1230 (9<sup>th</sup> Cir. 2002).  
 28 Procedural default also occurs if the claim was not presented to the state court and it is clear the  
 state would raise a procedural bar if it were presented now. *Id.*

1 Procedural default may be excused if the petitioner can “demonstrate cause for the  
2 default and actual prejudice as a result of the alleged violation of federal law, or demonstrate  
3 that failure to consider the claims will result in a fundamental miscarriage of justice.” *Boyd v.*  
4 *Thompson*, 147 F.3d 1124, 1126 (9<sup>th</sup> Cir. 1998). “To qualify for the fundamental miscarriage  
5 of justice exception to the procedural default rule, however, [the petitioner] must show that a  
6 constitutional violation has probably resulted in the conviction when he was actually innocent  
7 of the offense.” *Cook v. Schriro*, 538 F.3d 1000, 1028 (9<sup>th</sup> Cir. 2008).

8 If a claim is procedurally defaulted and is not excused, the claim should be dismissed  
9 with prejudice because the claim was not properly exhausted and “the petitioner has no further  
10 recourse in state court.” *Franklin*, 290 F.3d at 1231.

11

12 Discussion: Claims (a) and (b), *Miranda*

13 Channel argues that Sergeant Montoya questioned him after his arrest violating his  
14 rights under *Miranda*. (Doc. 7, p. 2) The respondents concede this claim was raised below and  
15 denied on the merits. (Doc. 24, p. 17)

16 Channel raised this claim before the Arizona Court of Appeals. (Doc. 24-5, pp. 63-64)  
17 That court explained simply that the trial court’s prior ruling dismissing Channel’s PCR petition  
18 was not an abuse of discretion. (Doc. 24-5, p. 94) Accordingly, this court examines the  
19 decision of the trial court and the evidence submitted to that court. *See also Cullen v.*  
20 *Pinholster*, 563 U.S. 170, 131 S.Ct. 1388 (2011) (A federal court analyzing a properly  
21 exhausted habeas claim is limited to the record that was before the state court when the claim  
22 was originally denied.).

23 The trial court acknowledged that Channel raised the issue of *Miranda*, among other  
24 things, but it found that he “never specified how these complaints could be, much less were,  
25 substantiated.” (Doc. 24-5, p. 32) Essentially, the trial court found that Channel’s *Miranda*  
26 claim was entirely conclusory without specific facts in support. *Id.* This court agrees. (Doc.  
27 24-1, p. 191) Channel stated that he was “under arrest” but failed to explain the totality of the  
28 circumstances surrounding that “arrest.” *Id.* He asserted that he was “interrogated” but failed

1 to give the specifics of that “interrogation.” *Id.* Channel’s claim as presented to the PCR court  
 2 was entirely conclusory. *Id.* The PCR court properly denied the claim. (Doc. 24-5, p. 32)

3 The Arizona Court of Appeals concluded that the trial court’s resolution of this claim  
 4 was not an abuse of discretion. That court’s adjudication of the claim did not “result[] in a  
 5 decision that was contrary to, or involve[] an unreasonable application of, clearly established  
 6 Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d).  
 7 Neither did it “result[] in a decision that was based on an unreasonable determination of the  
 8 facts in light of the evidence” available to the trial judge. 28 U.S.C. § 2254(d).

9

10 Claim (c), Police Department Operational Orders

11 Channel claims that Officer Guilford failed to follow police department policy. The writ  
 12 of habeas corpus, however, only affords relief to persons in custody *in violation of the*  
 13 *Constitution or laws or treaties of the United States.* 28 U.S.C. § 2254(a). A violation of a  
 14 police department policy cannot be redressed by a petition for writ of habeas corpus. This claim  
 15 is not cognizable.

16

17 Claim (d), Untimely Complaint; Claim (e), A.R.S.<sup>1</sup> Rule (a) and 5.1(b), c)

18 Channel argues that the deputy county attorney filed an untimely complaint. (Doc. 7,  
 19 p. 3) (Doc. 7, p. 14) He further argues his right to a preliminary hearing was violated. (Doc.  
 20 7-1, p. 1) These are state law issues, and as the court explained above, the writ of habeas corpus  
 21 only extends to violations of the Constitution or laws or treaties of the United States. 28 U.S.C.  
 22 § 2254(a) These claims are not cognizable. *See also Washington v. Arnold*, 2018 WL 1566542,  
 23 at \*9 (C.D. Cal. 2018) (There is no federal Constitutional right to a preliminary hearing), report  
 24 and recommendation adopted, 2018 WL 1472505 (C.D. Cal. 2018).

25

26 Claim (f), The “Seven Elements of Jurisdiction” Were Not Answered on the Record

27

28 <sup>1</sup> The Arizona Rule of Criminal Procedure 5.1 addresses the topics of preliminary hearing,  
 waiver, and continuance. It appears that Channel is referring to this rule in Claim (e). (Doc. 7, p. 2)

1 Channel claims that the “Seven Elements of Jurisdiction [were not] answered by  
 2 Commissioner Virginia L. Richter on the Record.” (Doc. 7, p. 2); (Doc. 7-1, pp. 7-9) The  
 3 respondents concede that the “Seven Elements of Jurisdiction” claim was raised below and  
 4 addressed on the merits. (Doc. 24, p. 8, 15, 17)

5 It is not clear to this court what the “Seven Elements” are or why Channel believes they  
 6 must be answered on the record. *See* (Doc. 7-1, pp. 7- 9); (Doc. 7-2, p. 1) If he is referring to  
 7 the “Rights of accused in criminal prosecutions” as discussed in the Arizona Constitution,  
 8 Article II, or procedural guarantees described in the Arizona Rules of Criminal Procedure, then  
 9 the claim is not cognizable in federal habeas corpus. *See* (Doc. 7-1, p. 1) (citing Arizona  
 10 Constitution, Article II, § 24, Rights); (Doc. 7-3, p. 7) As the court explained above, the writ  
 11 of habeas corpus only affords relief to persons in custody *in violation of the Constitution or laws*  
 12 *or treaties of the United States.* 28 U.S.C. § 2254(a).

13 In the alternative, this court should dismiss the claim because it is too vague to merit  
 14 relief. *See* Rule 2(c) of the Rules Governing Habeas Corpus Cases; *see, e.g., Greenway v.*  
 15 *Schriro*, 653 F.3d 790, 804 (9<sup>th</sup> Cir. 2011) (a “cursory and vague [claim] cannot support habeas  
 16 relief”).

17 In the alternative, the court adopts the respondents’ concession and finds that the Arizona  
 18 Court of Appeals denied the claim on the merits and Channel has not shown that prior  
 19 adjudication of this claim “resulted in a decision that was contrary to, or involved an  
 20 unreasonable application of, clearly established Federal law, as determined by the Supreme  
 21 Court of the United States.” 28 U.S.C. § 2254(d). Neither has he shown that prior adjudication  
 22 “resulted in a decision that was based on an unreasonable determination of the facts in light of  
 23 the evidence” available to the trial judge. 28 U.S.C. § 2254(d).

24

25 Claim (g), Ineffective Assistance of Counsel

26 Channel claims counsel was ineffective. (Doc. 7, pp. 2-3); (Doc. 7, p. 14) The  
 27 respondents concede this claim was raised below and denied on the merits. (Doc. 24, pp. 15-19)

1 To succeed on an ineffective assistance claim, the habeas petitioner must prove “his  
2 counsel’s performance was deficient in violation of the Sixth and Fourteenth Amendments” and  
3 “he was prejudiced by counsel’s deficient performance.” *Clark v. Arnold*, 769 F.3d 711, 725  
4 (9<sup>th</sup> Cir. 2014).

5 “Counsel is constitutionally deficient if the representation fell below an objective  
6 standard of reasonableness such that it was outside the range of competence demanded of  
7 attorneys in criminal cases.” *Clark*, 769 F.3d at 725 (punctuation modified). “When evaluating  
8 counsel’s conduct, [the court] must make every effort to eliminate the distorting effects of  
9 hindsight, and to evaluate the conduct from counsel’s perspective at the time.” *Id.*

10 “A defendant is prejudiced by counsel’s deficient performance if there is a reasonable  
11 probability that, but for counsel’s unprofessional errors, the result of the proceeding would have  
12 been different.” *Clark*, 769 F.3d at 725. “A reasonable probability is a probability sufficient to  
13 undermine confidence in the outcome.” *Id.*

14 Because hindsight is 20/20, “counsel is strongly presumed to have rendered adequate  
15 assistance and made all significant decisions in the exercise of reasonable professional  
16 judgment.” *Strickland*, 466 U.S. 668, 690 (1984). State court review of counsel’s performance  
17 is therefore highly deferential. Federal court review on habeas is “doubly deferential.” *Cullen*  
18 *v. Pinholster*, 563 U.S. 170, 190, 131 S. Ct. 1388, 1403 (2011).

19 The trial court examined this claim on the merits and found that Channel failed to show  
20 how counsel’s performance was deficient and how he was prejudiced. (Doc. 24-5, p. 32) This  
21 court agrees. In his PCR petition, Channel discussed at length the duties of counsel according  
22 to the American Bar Association (ABA). (Doc. 24-1, 200-206) He did not, however, clearly  
23 explain what his counsel did, or failed to do, which he considers ineffective assistance. *Id.*

24 The Arizona Court of Appeals found that the trial court’s denial of this claim was not an  
25 abuse of discretion. That court’s prior adjudication of this claim did not “result[] in a decision  
26 that was contrary to, or involve[] an unreasonable application of, clearly established Federal  
27 law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d). Neither

1 did it “result[] in a decision that was based on an unreasonable determination of the facts in light  
2 of the evidence” available to the trial judge. 28 U.S.C. § 2254(d).

3

4 Claim (h), The Trial Judge had a Conflict

5 Channel claims the trial judge had a conflict due to a prior proceeding in 2013. (Doc.  
6 7, p. 3) The respondents argue this claim was not properly exhausted and is now procedurally  
7 defaulted. (Doc. 24, pp. 12-15) This court finds that this claim may be denied on the merits.  
8 28 U.S. C. § 2254(b)(2). The court does not reach the respondents’ alternate arguments.

9 Channel maintains that the trial judge had a conflict, but he does not clearly explain why  
10 he believes this is so. He states that “she was the Prosiden [sic] Judge in 2013 . . .” (Doc. 7-1,  
11 p. 3) He further states that “Channel’s Petition’s [sic] are only being past [sic] to the same  
12 Judges Ruling against Channel . . .” (Doc. 7-3, p. 2) It appears that Channel believes the trial  
13 judge “had a conflict” because she presided over one of Channel’s earlier proceedings. That  
14 is not a conflict. *See Liteky v. United States*, 510 U.S. 540, 551, 114 S. Ct. 1147, 1155 (1994)  
15 (“[N]ot subject to deprecatory characterization as ‘bias’ or ‘prejudice’ are opinions held by  
16 judges as a result of what they learned in earlier proceedings. It has long been regarded as  
17 normal and proper for a judge to sit in the same case upon its remand, and to sit in successive  
18 trials involving the same defendant.”); *see also Murray v. Schriro*, 882 F.3d 778, 820 (9<sup>th</sup> Cir.)  
19 (“Roger has not identified any Supreme Court case holding that a defendant is deprived of due  
20 process when the trial judge presides over post-conviction proceedings.”), *cert. denied sub nom.*  
21 *Murray v. Ryan*, 139 S. Ct. 414 (2018). This claim should be denied on the merits.

22

23 Claim (i), Due Process; Claim (j), “Amendment Rights”

24 Channel argues generally that his rights were violated at some point. (Doc. 7, pp. 2-3)  
25 The Respondents concede these claims were raised below and denied on the merits. (Doc. 24,  
26 pp. 8, 15) The court will assume that Channel is raising here the constitutional issues he  
27 previously raised in his PCR petition. This court agrees that the claims were properly denied  
28 on the merits.

1           Channel raised a number of issues in his PCR petition. Channel claimed “that the  
 2 officers provided false testimony, that all the officers were not interviewed or called to testify  
 3 at trial, that bullets were not impounded, that his residence was not photographed, that he was  
 4 not read his *Miranda* Rights, that a warrant should have been obtained for the search of his  
 5 residence, that his statements were obtained under duress, that the complaint against him was  
 6 not filed timely, and that the State[] failed to provide exculpatory evidence in violation of *Brady*  
 7 *v. Maryland*, 373 U.S. 83 (1963).” (Doc. 24-5, p. 32) The trial court found, however, that he  
 8 “never specified how these complaints could be, much less were, substantiated.” (Doc. 24-5,  
 9 p. 32) Essentially, the trial court found that Channel’s claims were entirely conclusory without  
 10 being supported by specific facts. *Id.* This court agrees. *See* (Doc. 24-1, pp. 191-207)

11           The Arizona Court of Appeals concluded that the trial court’s resolution of this claim  
 12 was not an abuse of discretion. That court’s prior adjudication of this claim did not “result[] in  
 13 a decision that was contrary to, or involve[] an unreasonable application of, clearly established  
 14 Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d).  
 15 Neither did it “result[] in a decision that was based on an unreasonable determination of the  
 16 facts in light of the evidence” available to the trial judge. 28 U.S.C. § 2254(d).

17

18           Claim (k), Judicial Misconduct by Appointed Counsel, County Attorney, Court  
 19 Reporters, and Judges

20           This Claim appears to be a restatement of Claim (d), Claim (g), Claim (h), and Claim (i).

21

22           Claim (l), Improper Review by Court of Appeals Judges

23           It is unclear what Channel is arguing here. He implies that the court of appeals had an  
 24 incomplete record when it conducted its review, but he does not explain what records they  
 25 lacked, why they were absent, and how he was prejudiced. (Doc. 7, p. 3) This claim it is too  
 26 vague to merit relief. *See* Rule 2(c) of the Rules Governing Habeas Corpus Cases; *see, e.g., Greenway v. Schriro*, 653 F.3d 790, 804 (9<sup>th</sup> Cir. 2011) (a “cursory and vague [claim]  
 27 cannot support habeas relief”).

1                   Claim (m), There is a Conspiracy Against Rights in the District of Arizona; Claim (n)  
2                   There is a Deprivation of Civil Rights in the District of Arizona

3                   These Claims appear to be a restatement of Claim (i).

4  
5                   Claim (o), The “Seven Elements of Jurisdiction” were Not Proven on the Record; Claim  
6                   (p), Violation of “Article II Declaration of Rights, § 24 and §30 of the Arizona Constitution”

7                   These Claims appear to be a restatement of Claim (f).

8  
9                   Claim (q), The Waiver of Preliminary Hearing in the Record does not have a Signature  
10                  This Claim appears to be a restatement of Claim (e).

11                  RECOMMENDATION

12                  The Magistrate Judge recommends that the District Court, after its independent review  
13 of the record, enter an order Denying the petition for writ of habeas corpus. Channel's claims  
14 are, for the most part, vague and conclusory. Those claims that the court could understand are  
15 meritless.

16                  Pursuant to 28 U.S.C. §636 (b), any party may serve and file written objections within  
17 14 days of being served with a copy of this report and recommendation. If objections are not  
18 timely filed, they may be deemed waived. The Local Rules permit a response to an objection.  
19 They do not permit a reply to a response without the permission of the District Court.

20                  DATED this 7<sup>th</sup> day of January, 2019.

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24                  Leslie A. Bowman  
25                  United States Magistrate Judge  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

8 Michael Allen Channel, Sr., } No. CV 18-1432-PHX-JAS (LAB)  
9 Petitioner,  
10 vs.  
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12 Charles Ryan, et al. }  
13 Respondent. }  
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15 Pending before the Court is a Report and Recommendation issued by United States  
16 Magistrate Judge Bowman that recommends denying Petitioner’s habeas petition filed  
17 pursuant to 28 U.S.C. §2254.<sup>1</sup> As Petitioner’s objections do not undermine the analysis and  
18 proper conclusion reached by Magistrate Judge Bowman, Petitioner’s objections are rejected  
19 and the Report and Recommendation is adopted.

20 The Court has reviewed the record and concludes that Magistrate Judge Bowman's  
21 recommendations are not clearly erroneous and they are adopted. *See* 28 U.S.C. § 636(b)(1);  
22 Fed. R. Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999);  
23 *Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

<sup>1</sup>The Court reviews de novo the objected-to portions of the Report and Recommendation. 27 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

1 Before Petitioner can appeal this Court's judgment, a certificate of appealability must  
2 issue. *See* 28 U.S.C. §2253(c) and Fed. R. App. P. 22(b)(1). The district court that rendered  
3 a judgment denying the petition made pursuant to 28 U.S.C. §2254 must either issue a  
4 certificate of appealability or state why a certificate should not issue. *See id.* Additionally,  
5 28 U.S.C. §2253(c)(2) provides that a certificate may issue "only if the applicant has made  
6 a substantial showing of the denial of a constitutional right." In the certificate, the court must  
7 indicate which specific issues satisfy this showing. *See* 28 U.S.C. §2253(c)(3). A substantial  
8 showing is made when the resolution of an issue of appeal is debatable among reasonable  
9 jurists, if courts could resolve the issues differently, or if the issue deserves further  
10 proceedings. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Upon review of the  
11 record in light of the standards for granting a certificate of appealability, the Court concludes  
12 that a certificate shall not issue as the resolution of the petition is not debatable among  
13 reasonable jurists and does not deserve further proceedings.

14 || Accordingly, IT IS HEREBY ORDERED as follows:

15 (1) The Report and Recommendation (Doc. 29) is accepted and adopted. All pending  
16 motions are denied.

17 (2) Petitioner's §2254 habeas petition is denied and this case is dismissed with prejudice.

18 (3) A Certificate of Appealability is denied and shall not issue.

19 (4) The Clerk of the Court shall enter judgment and close the file in this case.

20 DATED this 15<sup>th</sup> day of March, 2019.

James A. Soto  
United States District Judge

**Additional material  
from this filing is  
available in the  
Clerk's Office.**