

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

STEPHEN JOSEPH MOCCO - PETITIONER

VS.

DAVID SHINN, ET AL. - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE NINTH CIRCUIT COURT OF APPEALS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Stephen J. Mocco #169300  
Arizona State Prison – Florence/South  
P.O. Box 8400  
Florence, Arizona 85132

## **APPENDIX A**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

OCT 1 2019

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

STEPHEN JOSEPH MOCCO,

No. 19-15197

Petitioner-Appellant,

v.

D.C. No. 4:16-cv-00474-RCC  
District of Arizona,  
TucsonCHARLES L. RYAN; ATTORNEY  
GENERAL FOR THE STATE OF  
ARIZONA,

ORDER

Respondents-Appellees.

Before: LEAVY and W. FLETCHER, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

## **APPENDIX B**

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Stephen Joseph Mocco,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.

14 No. CV-16-00474-TUC-RCC

15 **ORDER**

16 Pending before the Court is Stephen Joseph Mocco's Petition for Writ of Habeas  
17 Corpus (doc. 1), a report and recommendation ("R&R") prepared by Magistrate Judge  
18 Jacqueline Rateau (doc. 50), Mocco's objections to the R&R (doc. 52), the government's  
19 response and Mocco's reply. In the R&R, Magistrate Judge Rateau recommends that this  
20 Court denies Mocco's petition. After considering all filings, this Court shall overrule  
21 Mocco's objections and accept and adopt the R&R as the findings of fact and conclusions  
of law of this Court.

22 Mocco makes four objections to the R&R. In his first objection, Mocco argues that  
23 his sentence was illegal because his sentence was based, in part, on aggravating factors  
24 found by the trial court and not the jury in violation of Blakely v. Washington, 542 U.S.  
25 296 (2004). Mocco is correct in pointing out that he was actually sentenced on August  
26 19, 2004 and not February 14, 2003, but this does not alter the otherwise proper analysis  
27 found in the R&R. As discussed in the R&R, the trial court found several aggravating  
28 factors and these factors were Blakely-exempt. Because Blakely does not proscribe the

1 trial court's application of aggravating factors, this Court shall overrule Mocco's first  
2 objection.

3 In his second objection, Mocco argues that the R&R wrongly finds that he failed  
4 to fairly present the federal nature of Ground One in his petition. Mocco largely reargues  
5 this claim but to the extent he now makes new arguments they do not change the fact that  
6 the argument Mocco offered in his brief to the Arizona Court of Appeals was based  
7 exclusively on Arizona authority. Thus, he did not federalize this ground and this  
8 objection must fail.

9 In his third objection, Mocco disagrees with the R&R's conclusion that the state's  
10 failure to disclose a victim's mental health records did not violate *Brady v. Maryland*,  
11 373 U.S. 83 (1963). As discussed in the R&R, the prosecutors were not required to "learn  
12 of or search for information in the possession of agencies that are not at all involved in  
13 the government's investigation or prosecution." *United States v. Rodriguez*, 360 F. App'x  
14 743, 747 (9th Cir. 2009). Thus, this objection is overruled.

15 Mocco's fourth objection again takes issue with the R&R's conclusion that his  
16 sentence was not illegal under *Blakely*. However, as discussed in the R&R, Mocco fails  
17 to acknowledge that Arizona's sentencing scheme exposes a defendant to a fully  
18 aggravated sentencing range once one *Blakely*-compliant aggravating factor is found.  
19 Thus, this objection is also overruled.

20 In conclusion, the Court has reviewed Magistrate Judge Rateau's Report and  
21 Recommendation, the parties' briefs, and the record. The Court finds no error in Judge  
22 Rateau's Report and Recommendation. Accordingly,

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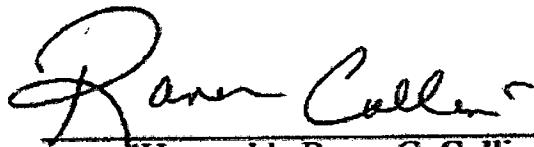
28 ...

1           **IT IS ORDERED** that the Report and Recommendation (Doc. 50) is accepted and  
2 adopted in full.

3           **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus (Doc.  
4 1) is denied. The Clerk of Court is directed to enter judgment accordingly and close this  
5 case.

6           **IT IS FURTHER ORDERED** that, pursuant to Rule 11 of the Rules Governing  
7 Section 2254 Cases, the Court declines to issue a certificate of appealability, because  
8 reasonable jurists would not find the Court's ruling debatable. *See Slack v. McDaniel*,  
9 529 U.S. 473, 478, 484 (2000).

10           Dated this 7th day of January, 2019.

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14           Honorable Raner C. Collins  
15           United States District Judge