

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 20 2023

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

JEREMY LEE KOONS,

Petitioner-Appellant,

v.

DAVID SHINN, Director,

Respondent-Appellee.

No. 23-15517

D.C. No. 4:21-cv-00172-RM
District of Arizona,
Tucson

ORDER

Before: TASHIMA and SILVERMAN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) 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.

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56 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jeremy Lee Koons,

No. CV-21-00172-TUC-RM

10 Petitioner,

ORDER

11 v.

12 David Shinn, et al.,

13 Respondents.

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15 On April 22, 2021, Petitioner Jeremy Lee Koons filed a Petition for Writ of
16 Habeas Corpus Under 28 U.S.C. § 2254, alleging in relevant part that the state court
17 violated the Fourth Amendment to the United States Constitution in denying his motion
18 to suppress a telephonic search warrant. (Doc. 1.) After the § 2254 Petition was fully
19 briefed (Docs. 9, 12), Petitioner moved to compel production of documents related to the
20 motion to suppress (Doc. 13). Magistrate Judge Jacqueline M. Rateau denied the Motion
21 to Compel Production (Doc. 16), and Petitioner appealed to this Court (Doc. 17). On
22 August 5, 2022, Magistrate Judge Rateau issued a Report and Recommendation (“R&R”)
23 (Doc. 19), recommending that this Court deny Petitioner’s § 2254 Petition. Petitioner
24 filed an Objection. (Doc. 22.)25 On November 23, 2022, this Court partially reversed Magistrate Judge Rateau’s
26 denial of Petitioner’s Motion to Compel Production and took under advisement
27 Petitioner’s objection to the R&R’s recommended resolution of Petitioner’s Fourth
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1 Amendment claim. (Doc. 24.)¹ The Court noted, in relevant part, that federal habeas
2 relief is unavailable on a state prisoner's Fourth Amendment claim if the prisoner was
3 provided a full and fair opportunity to litigate the claim in state court. (*Id.* at 7 (citing
4 *Stone v. Powell*, 428 U.S. 465, 494 (1976))). The Court further found that Arizona law
5 provides mechanisms for litigating Fourth Amendment claims, and that Petitioner utilized
6 those mechanisms to challenge the telephonic search warrant on numerous grounds. (*Id.*
7 at 7-8.) However, in response to Petitioner's argument that the Arizona courts failed to
8 consider a properly raised warrant particularity claim, the Court directed Respondents "to
9 file all documents related to the [state] trial court's denial of Petitioner's motion to
10 suppress, including, if available, the minute entry and transcript of the trial court's
11 hearing on Petitioner's motion to suppress." (*Id.* at 10.) The Court also directed the
12 parties to file supplemental briefs addressing: "(1) whether Petitioner fairly presented his
13 warrant particularity claim to the Arizona Court of Appeals by attaching his motion to
14 suppress to his opening brief on direct appeal; (2) whether an exception to the *Stone*
15 doctrine applies if both the trial court and the Arizona Court of Appeals failed to address
16 the warrant particularity claim; and (3) the merits of Petitioner's warrant particularity
17 claim." (*Id.* at 10-11.)

18 The parties have now filed their supplemental briefs. (Docs. 26, 27.) Petitioner
19 contends that he fairly presented his warranty particularity claim to the Arizona Court of
20 Appeals by referencing it in his opening brief on direct appeal and providing an
21 electronic link to the motion to suppress that he had filed in the trial court. (Doc. 26 at 1-
22.) Petitioner argues that he did not have a full and fair opportunity to litigate his
23 warranty particularity claim in state court because, even though he properly raised the
24 claim, the state courts failed to address it. (*Id.* at 2-3.) Finally, Petitioner argues that the
25 telephonic search warrant at issue was "completely unclear and insufficiently particular
26 as to how to lawfully effectuate the search." (*Id.* at 3-4.)

27 Respondents argue that Petitioner did not raise the warrant particularity issue in

28 ¹ The Court adopted the R&R's recommendation to deny Petitioner's ineffective-assistance-of-counsel claim. (*Id.*)

1 his opening brief on direct appeal and there is no basis for a finding that the Arizona
2 Court of Appeals was aware he intended to raise that issue. (Doc. 27 at 1-3.)
3 Respondents further argue that the motion to suppress that Petitioner filed in the state trial
4 court did not raise the same warrant particularity claim that is in Petitioner's § 2254
5 Petition. (*Id.* at 2-3.) Respondents also argue that Petitioner had a full and fair
6 opportunity to present his warrant particularity claim in state court, and that "Stone
7 contains no requirement that a state court specifically address each individual claim
8 raised in a motion to suppress as a prerequisite to finding the petitioner had a full and fair
9 opportunity to litigate a Fourth Amendment claim." (*Id.* at 3-4.) Finally, Respondents
10 argue that the warrant particularity claim is meritless. (*Id.* at 5.)

11 The search warrant at issue authorized placement of a GPS tracking device on
12 Petitioner's vehicle, but the language of the warrant provided that there was probable
13 cause to believe a GPS tracking device was possessed or concealed in Petitioner's vehicle
14 and was a fruit or instrumentality of a crime. (Doc. 12-3 at 2-4.) This confusing
15 language apparently resulted from the use of a form that was not well-suited to a warrant
16 for installation of a GPS tracking device. In his § 2254 Petition, Petitioner alleges that
17 the telephonic search warrant at issue lacked particularity because it described the GPS
18 tracker as a fruit or instrumentality of a crime that was possessed or concealed in the
19 vehicle, rather than instructing that the GPS tracker be installed on the vehicle. (Doc. 1 at
20 19-20.) In the motion to suppress that he filed in state trial court, Petitioner questioned
21 "[o]f what degree of particularity has been provided, when the affiant requests the
22 placement of a tracking device, described as now in the vehicle in question[.]" (Doc. 12-
23 2 at 3.) At the hearing on the motion to suppress, defense counsel argued that the warrant
24 lacked particularity because the officer described the GPS tracking device as a fruit or
25 instrumentality of a crime and the warrant described the tracking device as being
26 possessed or concealed in Petitioner's vehicle. (Doc. 25-1 at 47-48.) The trial judge
27 agreed that the warrant was not "very artfully drafted" but concluded "that's not to say
28 that this is necessarily deficient." (*Id.* at 48-49.) The court then denied the motion to

1 suppress. (*Id.* at 62, 75.)

2 In his opening brief on direct appeal filed in the Arizona Court of Appeals,
 3 Petitioner noted that “the search warrant [erroneously] describes the GPS tracking device
 4 as a fruit or instrumentality of a crime,” but he did not argue that this defect meant the
 5 warrant lacked particularity. (Doc. 9-1 at 41, 48.) The Arizona Court of Appeals
 6 affirmed the trial court’s denial of Petitioner’s motion to suppress without addressing a
 7 warrant particularity claim. (Doc. 9-1 at 5-14.)

8 “[W]here the State has provided an opportunity for full and fair litigation of a
 9 Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus
 10 relief on the ground that evidence obtained in an unconstitutional search or seizure was
 11 introduced at his trial.” *Stone*, 428 U.S. at 494. “The relevant inquiry is whether [the]
 12 petitioner had the opportunity to litigate his claim, not whether he did in fact do so or
 13 even whether the claim was correctly decided.” *Ortiz-Sandoval v. Gomez*, 81 F.3d 891,
 14 899 (9th Cir. 1996). The habeas petitioner bears the burden of demonstrating that the
 15 state courts did not provide him a full and fair opportunity to litigate a Fourth
 16 Amendment claim. *Woolery v. Arave*, 8 F.3d 1325, 1328 (9th Cir. 1993).

17 Both Magistrate Judge Rateau and this Court have already found that Petitioner
 18 was able to—and did—challenge the telephonic search warrant in the trial court and on
 19 appeal. (Doc. 19 at 8-9; Doc. 24 at 7-8.) The trial court addressed Petitioner’s warrant
 20 particularity claim, finding that the inartful drafting of the search warrant at issue did not
 21 necessarily render it deficient. (Doc. 25-1 at 48-49.)² The record shows that Petitioner
 22 had the opportunity to litigate his warrant particularity claim in state court; accordingly,
 23 the claim is not cognizable on federal habeas review, and the correctness of the trial
 24 court’s resolution of the claim is not at issue before this Court. *See Stone*, 428 U.S. at
 25 494; *Ortiz-Sandoval*, 81 F.3d at 899.

26 ² Although the Arizona Court of Appeals failed to specifically address Petitioner’s
 27 warrant particularity claim, that omission appears to have stemmed from Petitioner’s
 28 failure to clearly raise the claim in his opening brief on direct appeal. Furthermore,
 Petitioner has not shown that the Arizona Court of Appeals’ failure to address the claim
 renders the *Stone* doctrine inapplicable, particularly since the trial court did address the
 claim.

1 Accordingly,

2 **IT IS ORDERED** that Ground One of the Petition for Writ of Habeas Corpus
3 Pursuant to 28 U.S.C. § 2254 is **denied**, and the Petition (Doc. 1) is **dismissed**. The
4 Clerk of Court is directed to enter judgment accordingly and close this case.

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

9 Dated this 9th day of March, 2023.

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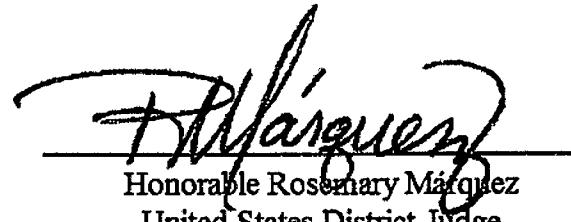
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Honorable Rosemary Márquez
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jeremy Lee Koons,

NO. CV-21-00172-TUC-RM

Petitioner,

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David Shinn, et al.,

Respondents.

**JUDGMENT OF DISMISSAL IN A
CIVIL CASE**

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

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed March 10, 2023, judgment of dismissal is entered. Petitioner to take nothing and this action is hereby dismissed.

Debra D. Lucas
District Court Executive/Clerk of Court

March 10, 2023

By s/ B. Cortez
Deputy Clerk

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