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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Joseph Lowell McElyea, Jr.,
Petitioner,
vs.
Dora B. Schriro, et al.,
Respondents.

No.CIV 06-0885-PHX-SMM (HCE)

MEMORANDUM OF DECISION AND ORDER

Pending before the Court is Petitioner’s Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. #1). The matter was referred to Magistrate Judge Hector C. Estrada for a Report and Recommendation (Doc. #3). On December 31, 2008, the Magistrate Judge filed a Report and Recommendation with this Court (Doc. #34). To date, no objections have been filed.

STANDARD OF REVIEW

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C); see Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991). Parties have ten days from the service of a copy of the Magistrate’s recommendation within which to file specific written objections to the Court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72. Failure to object to a Magistrate Judge’s recommendation relieves the Court of conducting *de novo* review of the Magistrate Judge’s factual findings and waives all objections to those findings on appeal. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). A failure to object to a Magistrate Judge’s conclusion “is

1 a factor to be weighed in considering the propriety of finding waiver of an issue on appeal.”

2 Id.

3 **DISCUSSION**

4 Having reviewed the Report and Recommendation of the Magistrate Judge, and no
5 Objections having been made by any party thereto, the Court hereby incorporates and adopts
6 the Magistrate Judge’s Report and Recommendation.

7 **CONCLUSION**

8 For the reasons set forth,

9 **IT IS ORDERED** that the Court adopts the Report and Recommendation of the
10 Magistrate Judge (Doc. #34).

11 **IT IS FURTHER ORDERED** that Petitioner’s Petition for Writ of Habeas Corpus
12 is **DENIED** and **DISMISSED**, terminating this case. The Clerk of the Court shall enter
13 judgment accordingly.

14 DATED this 29th day of January, 2009.

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18 Stephen M. McNamee
19 United States District Judge
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