

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

BRIAN ALLEN WILKINS,)	
)	
Petitioner,)	2:10-0443 JWS MEA
)	
vs.)	ORDER FROM CHAMBERS
)	
ATTORNEY GENERAL OF THE STATE OF ARIZONA,)	[Re: Motion at docket 14]
)	
Respondent.)	
)	

I. MOTION PRESENTED

Pursuant to 28 U.S.C. § 2254, petitioner Wilkins sought a writ of habeas corpus. At docket 14, respondent filed a motion requesting that the petition be dismissed for failure to exhaust state court remedies. Wilkins filed a response at docket 16. Thereafter, Magistrate Judge Aspey filed a report at docket 16 recommending that the motion at docket 14 be denied and that this matter be stayed pending a decision by the Arizona Court of Appeals on Wilkins’ pending request for review of the trial court’s denial of relief in his Rule 32 action.

II. STANDARD OF REVIEW

The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.”¹ When reviewing a magistrate judge’s report and recommendation in a case such as this one, the district court conducts *de novo* review of all conclusions of law,² and any findings of fact to which objections have been made.³ Uncontested findings of fact are reviewed for clear error.⁴

III. DISCUSSION

Wilkins filed minor objections at docket 18 pointing to what he classified as a typographical error at five places in the report from the magistrate judge. Respondent did not file any objections. Having reviewed the parties’ papers and applied the standard of review articulated above, this court concludes that the magistrate judge has correctly found the facts and applied the law in all material respects. The court finds it unnecessary to deal with the alleged typographical errors at this time.

IV. CONCLUSION

For the reasons above, this court adopts Magistrate Judge Aspey’s recommended findings and conclusions. Based thereon, the motion at docket 14 is **DENIED**, and **IT IS FURTHER ORDERED** that this matter is **STAYED** pending the filing in this court by one or both parties of a copy of the Arizona Court of Appeals’ decision at

¹28 U.S.C. § 636(b)(1).

²*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

³28 U.S.C. § 636(b)(1).

⁴*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).

which time the **STAY** shall be deemed to have been lifted without further order from this court. At that time magistrate judge shall continue with such proceedings as may be necessary to bring this matter to a conclusion.

DATED this 27th day of January 2011.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE