

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

***Jerry Lee Cole v. Charles L. Ryan, et al***

THE HONORABLE JOHN W. SEDWICK

2:10-cv-1913 JWS

PROCEEDINGS:

**ORDER FROM CHAMBERS**

September 12, 2011

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Jerry Lee Cole (“petitioner”) moved for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was briefed. Thereafter, in a report at docket 11, Magistrate Judge Michelle Burns recommended that the petition be denied and dismissed with prejudice. Petitioner has not filed any objections to the report.

This 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). When reviewing a magistrate judge’s recommendations in a case such as this one, this court conducts *de novo* review of all recommended conclusions of law, and any recommended findings of fact to which objections have been taken. Recommended findings of fact as to which no objection has been taken are reviewed for clear error. Having applied those standards of review, this court finds that the recommended findings of fact and conclusions of law are correct in all material respects. Accordingly, this court adopts Magistrate Judge Burns’ recommendations at docket 11. Based thereon, the petition at docket 1 is **DENIED**. The Clerk will please enter judgment dismissing the petition with prejudice.

**IT IS FURTHER ORDERED THAT** this court will not grant the Certificate of Appealability required by 28 U.S.C. § 2253(c), nor will it grant leave to proceed on appeal *in forma pauperis*, because dismissal of the petition is clearly warranted by a plain procedural bar, and jurists of reason would not find the procedural bar debatable. If petitioner desires to take an appeal, he must request a Certificate of Appealability from the Court of Appeals. See Fed. R. App. P. 22(b)(1).

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