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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Lewis K. Farnsworth,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

No. CV-10-2803-PHX-PGR (DKD)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Duncan notwithstanding that no party has filed any objections to the Report and Recommendation, the Court finds that the Magistrate Judge correctly concluded that the petitioner’s Petition for Writ of Habeas Corpus, timely filed pursuant to 28 U.S.C. § 2254, should be dismissed because both of the petitioner’s claims raised therein were procedurally defaulted inasmuch as the petitioner did not fairly present either one to the state courts, and that his failure to do so cannot be excused because the petitioner has not established any cause for the procedural defaults or any prejudice arising from the alleged constitutional errors, or that a fundamental miscarriage of justice will result from the Court not deciding these defaulted claims. Therefore,

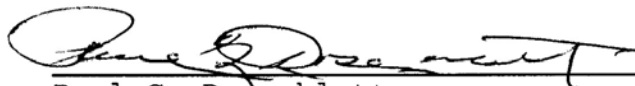
1 IT IS ORDERED that the Magistrate Judge's Report and Recommendation  
2 (Doc. 12) is accepted and adopted by the Court.

3 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C.  
4 § 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied and  
5 that this action is dismissed with prejudice.

6 IT IS FURTHER ORDERED that no certificate of appealability shall issue  
7 and that the petitioner shall not be allowed to appeal *in forma pauperis* because  
8 the dismissal of the habeas petition is justified by a plain procedural bar and  
9 jurists of reason would not find the procedural ruling debatable.

10 IT IS FURTHER ORDERED that the Clerk of the Court shall enter  
11 judgment accordingly.

12 DATED this 2<sup>nd</sup> day of May, 2011.

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15 Paul G. Rosenblatt  
16 United States District Judge  
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