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

John William Capes,	)	No. CV-11-507-PHX-SMM (MHM)
Petitioner,	)	
vs.	)	<b>MEMORANDUM OF DECISION AND ORDER</b>
Charles Ryan, et al.,	)	
Respondents.	)	

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On February 14, 2012, Magistrate Judge Michelle Burns filed a Report and Recommendation advising this Court that Petitioner’s Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (the “Amended Petition”) (Doc. 5) was denied on the ground that the claims in the Amended Petition failed to constitute a cognizable basis for federal habeas relief. (See Doc. 22.) To date, no objections have been filed.

**STANDARD OF REVIEW**

When reviewing a Magistrate Judge’s Report and Recommendation, this Court must “make a de novo determination of those portions of the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C); see also Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991) (citing Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983)). Failure to object to a Magistrate Judge’s recommendation relieves the Court of conducting de novo review of the Magistrate Judge’s factual findings; the Court then may decide the dispositive motion on the applicable law.

1 Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979) (citing Campbell v. United States  
2 Dist. Court, 501 F.2d 196 (9th Cir. 1974)).

3 By failing to object to a Report and Recommendation, a party waives its right to  
4 challenge the Magistrate Judge's factual findings, but not necessarily the Magistrate Judge's  
5 legal conclusions. Baxter, 923 F.2d at 1394; see also Turner v. Duncan, 158 F.3d 449, 455  
6 (9th Cir. 1998) (failure to object to a Magistrate Judge's legal conclusion "is a factor to be  
7 weighed in considering the propriety of finding waiver of an issue on appeal"); Martinez v.  
8 Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991) (citing McCall v. Andrus, 628 F.2d 1185, 1187  
9 (9th Cir. 1980)).

### 10 DISCUSSION

11 Having reviewed the legal conclusions of the Report and Recommendation of the  
12 Magistrate Judge, and no objections having been made by the Petitioner, the Court hereby  
13 incorporates and adopts the Magistrate Judge's Report and Recommendation.

### 14 CONCLUSION

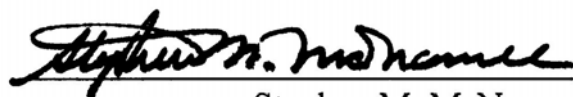
15 For the reasons set forth,

16 **IT IS HEREBY ORDERED** approving, incorporating, and adopting the Report and  
17 Recommendation of Magistrate Judge Michelle Burns. (Doc. 22.)

18 **IT IS FURTHER ORDERED** that Petitioner's Amended Petition for Writ of Habeas  
19 Corpus pursuant to 28 U.S.C. § 2254 is **DENIED** and **DISMISSED WITH PREJUDICE**.  
20 (Doc. 5.)

21 **IT IS FURTHER ORDERED DENYING** issuance of a Certificate of Appealability.  
22 See Rule 11(a), 28 U.S.C. foll. § 2254. Petitioner has failed to make a substantial showing  
23 of the denial of a constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

24 DATED this 16th day of March, 2012.

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27 Stephen M. McNamee  
28 Senior United States District Judge