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

Roosevelt Foster, Jr.,)	No. CV 11-1316-PHX-SMM (JFM)
)	
Petitioner,)	
)	
v.)	MEMORANDUM OF DECISION
)	AND ORDER
Charles L. Ryan, et al.,)	
)	
Respondents.)	

On May 8, 2012, Magistrate Judge James F. Metcalf 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. 7) should be denied and dismissed with prejudice. (Doc 32.) To date, Petitioner has not filed objections to Judge Metcalf’s Report and Recommendation.

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)).

By failing to object to a Report and Recommendation, a party waives his right to challenge the Magistrate’s factual findings, but not necessarily the Magistrate’s legal

1 conclusions. Baxter, 923 F.2d at 1394; see also Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.
2 1998) (failure to object to Magistrate’s legal conclusion “is a factor to be weighed in
3 considering the propriety of finding waiver of an issue on appeal”); Martinez v. Ylst, 951 F.2d
4 1153, 1156 (9th Cir. 1991) (citing McCall v. Andrus, 628 F.2d 1185, 1187 (9th Cir. 1980)).

5 **DISCUSSION**

6 Having reviewed Petitioner’s Petition and, thereafter, having reviewed the Magistrate
7 Judge’s Report and Recommendation and the record de novo, and no objections having been
8 made by Petitioner thereto, the Court hereby incorporates and adopts the Magistrate Judge’s
9 Report and Recommendation.

10 **CONCLUSION**

11 For the reasons set forth,

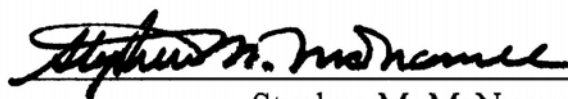
12 **IT IS HEREBY ORDERED** that the Court adopts the Report and Recommendation of
13 Magistrate Judge James F. Metcalf. (Doc. 32.)

14 **IT IS FURTHER ORDERED** that the portion of Petitioner’s Amended Petition for
15 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 asserting a claim under Anders v.
16 California, 368 U.S. 738 (1967) is **DENIED WITH PREJUDICE ON THE MERITS**. (Doc.
17 7.) The remainder of Petitioner’s Amended Petition is procedurally barred and **DISMISSED**
18 **WITH PREJUDICE**. (Doc. 7.) The Clerk of Court shall terminate this action accordingly.

19 **IT IS FURTHER ORDERED DENYING**, pursuant to 28 U.S.C. § 2253(c)(2),
20 issuance of a certificate of appealability on any of Petitioner’s claims based on the reasons
21 provided in the Report and Recommendation of Magistrate Judge James F. Metcalf. (Doc. 32.)

22 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send a copy of this Order
23 to all parties as well as to Magistrate Judge James F. Metcalf.

24 DATED this 11th day of July, 2012.

25
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27 Stephen M. McNamee
28 Senior United States District Judge