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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Salvador Vivas Diaz,	)	No. 11-CV-2520-PHX-PGR (MHB)
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Charles L. Ryan, et. al.,	)	
	)	
Respondents.	)	

Before the Court is the Report and Recommendation of Magistrate Judge Burns (Doc. 10), which addresses Petitioner’s pro se Petition for Writ of Habeas Corpus, filed December 20, 2011, pursuant to 28 U.S.C. § 2254 (Doc. 1). Petitioner filed objections to the Report and Recommendation, together with a motion for discovery and for an extension of time to file objections. (Docs. 11, 12.)

**DISCUSSION**

Petitioner’s habeas petition raised five grounds for relief.<sup>1</sup> Magistrate Judge Burns found that Grounds One and Two, in which Petitioner challenged the application of an aggravating factor and alleged ineffective assistance of counsel, were procedurally barred based on independent and adequate state law grounds. Magistrate Judge Burns found that Ground Three, alleging that Petitioner was denied his right to be present at his restitution hearing, was both procedurally barred and without merit. Magistrate Judge Burns found that Grounds Four and Five, alleging a denial of Petitioner’s due process and equal protection

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<sup>1</sup> On March 23, 2009, Petitioner pleaded guilty to manslaughter, a dangerous offense. Pursuant to the plea agreement, he received a sentence of 16 years. At sentencing Petitioner waived his appearance at any future restitution hearing.

1 rights and raising a claim of actual innocence, are procedurally defaulted because they were  
2 not presented in state court. Finally, Magistrate Judge Burns concluded that Petitioner failed  
3 to show cause and prejudice to excuse the defaults or that a fundamental miscarriage of  
4 justice would result if the claims were not reviewed.

5 Petitioner's objections (Doc. 12) to the Report and Recommendation consist of a  
6 request for additional, unspecified state court documents and a reference to the arguments  
7 set forth in his reply brief (Doc. 9). Magistrate Judge Burns addressed Petitioner's arguments  
8 and correctly determined that he is not entitled to habeas relief.

9 Having considered the matter *de novo* in light of Petitioner's objections, the Court will  
10 adopt the Report and Recommendation, deny the habeas petition, and dismiss the action.

11 Accordingly,

12 IT IS HEREBY ORDERED that Magistrate Judge Burns's Report and  
13 Recommendation (Doc. 10) is **ACCEPTED** and **ADOPTED** by the Court.

14 IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus is  
15 **DISMISSED** and **DENIED** with prejudice. (Doc. 1.)

16 IT IS FURTHER ORDERED **DENYING** a Certificate of Appealability and  
17 **DENYING** leave to proceed *in forma pauperis* on appeal because Petitioner has not made  
18 a substantial showing of the denial of a constitutional right.

19 IT IS FURTHER ORDERED **DENYING** Petitioner's motion for discovery and an  
20 extension of the deadline for responding to the Report and Recommendation. (Doc. 12.)

21 IT IS FURTHER ORDERED **DENYING** as moot Petitioner's motion for a status  
22 report. (Doc. 13.)

23 IT IS FURTHER ORDERED that the Clerk of the Court shall close this case.

24 DATED this 18<sup>th</sup> day of March, 2013.

25  
26   
27 Paul G. Rosenblatt  
28 United States District Judge