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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Marcus DeWayne Burgess,)	No. CV-12-01569-PHX-FJM
)	
Petitioner,)	ORDER
vs.)	
)	
Charles L. Ryan, et al.,)	
)	
Respondents.)	

Before the court is Petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (doc. 1), Respondents’ response (doc. 10), Petitioner’s reply (doc. 15), and the Report and Recommendation of the United States Magistrate Judge recommending that the petition be denied (doc. 17). Petitioner did not filed objections to the Report and Recommendation and the time for doing so has expired.

Pursuant to Rule 8(b), Rules Governing § 2254 Cases, we accept the recommended decision of the United States Magistrate Judge. Therefore, **IT IS ORDERED DENYING AND DISMISSING** with prejudice the petition for writ of habeas corpus (doc. 1).

IT IS FURTHER ORDERED DENYING a certificate of appealability and leave to proceed *in forma pauperis* on appeal because dismissal of the habeas petition is justified by a plain procedural bar and jurists of reason would not find the ruling debatable, and because Petitioner has not made a substantial showing of the denial of a constitutional right.

DATED this 17th day of September, 2013.

Frederick J. Martone

Frederick J. Martone
Senior United States District Judge