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

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9 David Rand Parshall,

No. CV-12-1647-PHX-SMM (MEA)

10 Petitioner,

11 vs.

**MEMORANDUM OF DECISION
AND ORDER**

12 Charles L. Ryan, et al.,

13 Respondents.

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16 Pending before the Court is Petitioner’s Petition for Writ of Habeas Corpus pursuant
17 to 28 U.S.C. § 2254. (Doc. 1.) The matter was referred to Magistrate Judge Mark E. Aspey
18 for a Report and Recommendation. (Doc. 3.) On April 23, 2013, the Magistrate Judge filed
19 a Report and Recommendation with this Court. (Doc. 14.) On May 8, 2013, Petitioner
20 requested additional time to file objections, which was granted. (Docs. 15, 16.) To date, no
21 objections have been filed.

22 **STANDARD OF REVIEW**

23 The Court “may accept, reject, or modify, in whole or in part, the findings or
24 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C); see Baxter v. Sullivan,
25 923 F.2d 1391, 1394 (9th Cir. 1991). Parties have fourteen days from the service of a copy
26 of the Magistrate’s recommendation within which to file specific written objections to the
27 Court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72. Petitioner requested and was provided
28 additional time to file his objections to the report. Petitioner’s failure to object to a

1 Magistrate Judge’s recommendation relieves the Court of conducting *de novo* review of the
2 Magistrate Judge’s factual findings and waives all objections to those findings on appeal.
3 See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). A failure to object to a Magistrate
4 Judge’s conclusion “is a factor to be weighed in considering the propriety of finding waiver
5 of an issue on appeal.” Id.

6 DISCUSSION

7 Having reviewed the thorough Report and Recommendation of the Magistrate Judge,
8 and no Objections having been made by any party thereto, the Court hereby incorporates and
9 adopts the Magistrate Judge’s Report and Recommendation denying relief.

10 The standard for this Court to issue a Certificate of Appealability (“COA”) is whether
11 the applicant has “made a substantial showing of the denial of a constitutional right .” 28
12 U.S.C. § 2253(c)(2); Rule 11(a) of the Rules Governing Section 2254 Cases. “Where a
13 district court has rejected the constitutional claims on the merits, the showing required to
14 satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists
15 would find the district court’s assessment of the constitutional claims debatable or wrong.”
16 Slack v. McDaniel, 529 U.S. 473, 484 (2000). “When the district court denies a habeas
17 petition on procedural grounds without reaching the prisoner’s underlying constitutional
18 claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find
19 it debatable whether the petition states a valid claim of the denial of a constitutional right and
20 that jurists of reason would find it debatable whether the district court was correct in its
21 procedural ruling.” Id.

22 CONCLUSION

23 Accordingly, based on the reasons set forth,

24 **IT IS HEREBY ORDERED** that the Court adopts the Report and Recommendation
25 of the Magistrate Judge. (Doc. 14.)

26 **IT IS FURTHER ORDERED** that Petitioner’s Petition for Writ of Habeas Corpus
27 is **DENIED**, terminating this case. The Clerk of the Court shall enter judgment accordingly.

28 **IT IS FURTHER ORDERED** that a Certificate of Appealability and leave to

1 proceed *in forma pauperis* on appeal are **DENIED** because Petitioner has not made a
2 substantial showing of the denial of a constitutional right regarding his ineffective assistance
3 of counsel claims. In addition, the dismissal of his remaining claims was justified by a plain
4 procedural bar and jurists of reason would not find the procedural ruling debatable.

5 DATED this 22nd day of August, 2013.

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8 Stephen M. McNamee
9 Senior United States District Judge
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