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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Roberto Hernandez,
Petitioner,
v.
Charles L. Ryan, et al.,
Respondents.

No. CV-13-01801-PHX-NVW (JZB)

**ORDER
and
DENIAL OF CERTIFICATE OF
APPEALABILITY AND IN FORMA
PAUPERIS STATUS**

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge John Z. Boyle (Doc.15) regarding petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be denied and dismissed with prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 24, 25 (citing 28 U.S.C. § 636(b)). Petitioner filed objections on January 28, 2015 (Doc. 18).

The Court has considered the objections and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). Petitioner objects that he was not able to file a reply brief because he was in segregation. That objection is harmless because Petitioner has been able to state whatever he wishes in his Objections (Doc. 18). The Court has considered the Objections to the same extent as if they had been filed before the Magistrate Judge prepared the Report and Recommendation. Even with the

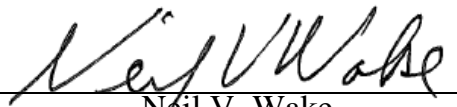
1 benefit of Petitioner's additional argument, the Court agrees with the Magistrate Judge's
2 determinations, accepts the recommended decision within the meaning of Rule 72(b),
3 Fed. R. Civ. P., and overrules Petitioner's objections. *See* 28 U.S.C. § 636(b)(1) (stating
4 that the district court "may accept, reject, or modify, in whole or in part, the findings or
5 recommendations made by the magistrate").

6 IT IS THEREFORE ORDERED that the Report and Recommendation of the
7 Magistrate Judge (Doc. 15) is accepted.

8 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying
9 Petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc.
10 1) with prejudice. The Clerk shall terminate this action.

11 Having considered the issuance of a Certificate of Appealability from the order
12 denying Petitioner's Petition for a Writ of Habeas Corpus, a Certificate of Appealability
13 and leave to proceed in forma pauperis on appeal are denied because dismissal of the
14 Petition is justified by a plain procedural bar.

15 Dated this 30th day of January, 2015.

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20 Neil V. Wake
21 United States District Judge
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