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## IN THE UNITED STATES DISTRICT COURT

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## FOR THE DISTRICT OF ARIZONA

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Carlos Devon Lewis,

No. CV-13-02339-PHX-DJH

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Petitioner,

**ORDER**

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v.

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Teresa Schroder, et al.,

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Respondents.

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This matter is before the Court on Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) and the Report and Recommendation ("R&R") issued by United States Magistrate Judge James F. Metcalf (Doc. 35). Following a jury trial, Petitioner was convicted of automobile theft, unlawful flight and criminal damage. (Doc. 35 at 3). He raised four grounds for relief in the Petition. (Doc. 35 at 6). After a thorough analysis, Judge Metcalf concluded that the Petition is untimely and therefore barred by the statute of limitations. (Doc. 35 at 28). Accordingly, Judge Metcalf recommends the Petition be dismissed with prejudice. (Doc. 35 at 29-30).

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Judge Metcalf advised the parties that they had fourteen days to file objections and that the failure to file timely objections "will be considered a waiver of a party's right to *de novo* consideration of the issues." (Doc. 35 at 30) (citing Fed. R. Civ. P. 72(b) and *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*)). The parties have not filed objections and the time to do so has expired. Absent any objections, the Court is not required to review the findings and recommendations in the

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1 R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (The relevant provision of the  
2 Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C), “does not on its face require any  
3 review at all . . . of any issue that is not the subject of an objection.”); *Reyna-Tapia*, 328  
4 F.3d at 1121 (same); Fed.R.Civ.P. 72(b)(3) (“The district judge must determine de novo  
5 any part of the magistrate judge’s disposition that has been properly objected to.”).

6 Nonetheless, the Court has reviewed the R&R and agrees with its findings and  
7 recommendations. The Court will, therefore, accept the R&R and deny the Petition. *See*  
8 28 U.S.C. § 636(b)(1)(C) (“A judge of the court may accept, reject, or modify, in whole  
9 or in part, the findings or recommendations made by the magistrate judge.”);  
10 Fed.R.Civ.P. 72(b)(3) (same).

11 Accordingly,

12 **IT IS ORDERED** that Magistrate Judge Metcalf’s R&R (Doc. 35) is **accepted**  
13 and **adopted** as the order of this Court.

14 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus  
15 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **denied** and **dismissed with prejudice**.

16 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing  
17 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*  
18 on appeal are **denied** because dismissal of the Petition is justified by a plain procedural  
19 bar and jurists of reason would not find the procedural ruling debatable.

20 **IT IS FINALLY ORDERED** that the Clerk of Court shall terminate this action  
21 and enter judgment accordingly.

22 Dated this 2nd day of December, 2014.

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25 Honorable Diane J. Humetewa  
26 United States District Judge  
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