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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Christopher John Benedetto,

10 Petitioner,

11 v.

12 Arizona, State of, et al.,

13 Respondents.  
14

No. CV-14-0033-PHX-JAT

**ORDER**

15 Pending before the Court is Petitioner's Fourth Amended Habeas Petition. (Doc.  
16 14). The Magistrate Judge to whom this case was assigned, issued a Report and  
17 Recommendation (R&R) (Doc. 28) recommending that the Fourth Amended Habeas  
18 Petition be denied by this Court. Preliminarily, the Court will review the procedural  
19 posture of this case.

20 In the Order in which this Court permitted the filing and service of the Fourth  
21 Amended Habeas Petition (Doc. 13), this Court dismissed Ground Four of the Petition  
22 because it was based on an alleged error of state law which is not cognizable on Federal  
23 habeas review. *See* 28 U.S.C. § 2254(a). Petitioner sought an interlocutory certificate of  
24 appealability on this issue. (Doc. 24). The Magistrate Judge denied this motion. (Doc.  
25 25). Petitioner then refiled this Motion with the Ninth Circuit Court of Appeals, which  
26 transferred this motion to this Court. (Doc. 29). While this Motion was pending,  
27 Petitioner proceeded to file an interlocutory appeal with the Ninth Circuit Court of  
28 Appeals. (Doc. 32). The Ninth Circuit Court of Appeals dismissed the interlocutory

1 appeal. (Doc. 34).

2 Thus, still pending before this Court is both a request to obtain an interlocutory  
3 certificate of appealability on the dismissal of Ground Four (Doc. 29) and a request to  
4 proceed in forma pauperis on the interlocutory appeal (Doc. 30). After both of these  
5 were filed, the Magistrate Judge issued the R&R that is now pending before this Court.  
6 (Doc. 28). Petitioner did not file objections to the R&R. Petitioner did renew his request  
7 for a certificate of appealability and for leave to proceed in forma pauperis on all grounds  
8 raised in his Fourth Amended Habeas Petition, including previously dismissed Ground  
9 Four. (Doc. 31). Because the Court will proceed to the final determination of this case,  
10 the Court will deny the requests related to an interlocutory appeal as moot.

11 As indicated above, Petitioner did not file objections to the R&R. This Court  
12 “may accept, reject, or modify, in whole or in part, the findings or recommendations  
13 made by the magistrate judge.” 28 U.S.C. § 636(b)(1). It is “clear that the district judge  
14 must review the magistrate judge’s findings and recommendations *de novo if objection is*  
15 *made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir.  
16 2003) (*en banc*) (emphasis in original); *Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226  
17 (D.Ariz. 2003) (“Following *Reyna-Tapia*, this Court concludes that *de novo* review of  
18 factual and legal issues is required if objections are made, ‘but not otherwise.’”); *Klamath*  
19 *Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d 1027, 1032 (9<sup>th</sup> Cir.  
20 2009) (the district court “must review *de novo* the portions of the [Magistrate Judge’s]  
21 recommendations to which the parties object.”). District courts are not required to  
22 conduct “any review at all . . . of *any issue* that is not the subject of an objection.”  
23 *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (emphasis added); *see also* 28 U.S.C. §  
24 636(b)(1) (“the court shall make a *de novo* determination of those portions of the [report  
25 and recommendation] to which objection is made.”).

26 Thus, the Court accepts and adopts the R&R on Grounds One through Three of the  
27 Fourth Amended Habeas Petition. However, the Court will consider the request for a  
28 certificate of appealability *de novo* because Petitioner filed a separate motion on that

1 issue which the Court will construe as an objection to the R&R on that issue.

2 A judge may issue a COA “only if the applicant has made a substantial showing of  
3 the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district court has  
4 rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c)  
5 is straightforward: The petitioner must demonstrate that reasonable jurists would find the  
6 district court’s assessment of the constitutional claims debatable or wrong.” *Slack v.*  
7 *McDaniel*, 529 U.S. 473, 483-84 (2000). “When the district court denies a habeas  
8 petition on procedural grounds without reaching the prisoner’s underlying constitutional  
9 claim, a COA should issue when the prisoner shows, at least, that jurists of reason would  
10 find it debatable whether the petition states a valid claim of the denial of a constitutional  
11 right and that jurists of reason would find it debatable whether the district court was  
12 correct in its procedural ruling.” *Id.* at 484.

13 Here, Ground Four failed to state a constitutional claim, and was denied for this  
14 reason. Ground One was denied for both a procedural reason and a merits reason.  
15 Ground Two was denied on the merits. And, Ground Three was denied because it failed  
16 to state a constitutional challenge, was not exhausted as a federal claim in the state courts,  
17 and on the merits. The Court has considered all of these reasons for denial of Petitioner’s  
18 claims and finds that jurists of reason would not find this Court’s procedural rulings nor  
19 this Court’s assessment of the constitutional claims debatable or wrong. Accordingly, a  
20 certificate of appealability will be denied.

21 Based on the foregoing,

22 **IT IS ORDERED** that the Report and Recommendation (Doc. 28) is accepted and  
23 adopted. The Fourth Amended Habeas Petition (Doc. 14) is denied and dismissed with  
24 prejudice and the Clerk of the Court shall enter judgment accordingly.

25 **IT IS FURTHER ORDERED** that Petitioner’s motion for certificate of  
26 appealability and to proceed in forma pauperis on appeal (Doc. 31) is denied.

27 **IT IS FINALLY ORDERED** that Petitioner’s motions for an interlocutory  
28 certificate of appealability and to file an interlocutory appeal in forma pauperis (Docs. 29

1 and 30) are denied as moot.

2 Dated this 1st day of April, 2015.

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James A. Teilborg  
Senior United States District Judge