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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

John William Seitz,
Petitioner,
vs.
Charles L. Ryan, et al.,
Respondents.

No. CV-14-00087-PHX-PGR (MHB)

ORDER

Having reviewed *de novo* the Report and Recommendation (Doc. 16) of Magistrate Judge Burns in light of petitioner Seitz’s Objection to the Report and Recommendation (Doc. 17) and his Response to Respondent’s Request to Denied [sic] Petitioner’s Habeas Courpus [sic] Petition (Doc. 19), which the Court construes as a supplement to his objections, the Court finds that the petitioner’s objections should be overruled as being without merit because the Magistrate Judge correctly concluded that the petitioner’s timely-filed amended habeas corpus petition (Doc. 7), filed pursuant to 28 U.S.C. § 2254, should be denied in its entirety.

The Court agrees with the Magistrate Judge that the Court is precluded from reaching the merits of the four grounds the petitioner raised in his amended petition because the petitioner procedurally defaulted on all of those grounds inasmuch as

1 he failed to properly present them to the state courts. The Court also agrees with
2 the Magistrate Judge that the petitioner has not established any cause for his
3 procedural defaults sufficient to excuse them, which includes his claims of ineffective
4 assistance of his counsel, nor has he shown that any fundamental miscarriage of
5 justice would occur if the merits of his claims are not reached.¹ Therefore,

6 IT IS ORDERED that petitioner John Seitz's Motion Requesting Status of
7 Petition for Writ of Habeas Corpus (Doc. 20) is denied as moot given the issuance
8 of this Order.

9 IT IS FURTHER ORDERED that the Magistrate Judge's Report and
10 Recommendation (Doc. 16) is accepted and adopted by the Court.

11 IT IS FURTHER ORDERED that petitioner John Seitz's [Amended] Petition
12 Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody
13 (Doc. 7) is denied and that this action is dismissed with prejudice.

14 IT IS FURTHER ORDERED that a certificate of appealability shall not issue
15 and that the petitioner is not entitled to appeal *in forma pauperis* because the
16 dismissal of the amended habeas petition is justified by a plain procedural bar and
17 jurists of reason would not find the procedural ruling debatable.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
19

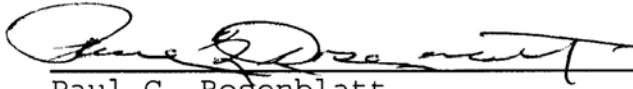
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21 The petitioner's argument in his Objection that the respondents have
22 improperly failed to address the "real issues" in his amended petition, *i.e.* those
23 issues he raised directed at violations of his due process rights, because they filed
24 a "limited answer" to his amended petition is meritless. The Court's order (Doc. 8),
25 entered on June 3, 2014, which required an answer from the respondents, provided
26 in part that "Respondents must not file a dispositive motion in place of an answer but
may file an answer limited to relevant affirmative defenses, including but not limited
to, statute of limitations, procedural bar, or non-retroactivity." The respondents'
"limited answer" was properly directed at the procedural issues that bar the
consideration of the merits of the petitioner's amended petition.

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accordingly.

DATED this 2nd day of June, 2015.


Paul G. Rosenblatt
United States District Judge