

1 The Petitioner was sentenced to a presumptive 18 year prison term for Count 1, a
2 15 year prison term for Count 3, and two presumptive, concurrent, 3.5 year prison terms
3 on Counts 4 and 5 (Doc. 10, Ex. G). The trial court ordered consecutive sentencing on
4 Counts 1 and 3 and consecutively to the concurrent terms of prison for Counts 4 and 5
5 (Id).

6 The Petitioner raises 4 grounds for relief in his Petition for Writ of Habeas Corpus.
7 In *Ground 1*, the Petitioner argues that his trial counsel was ineffective because counsel
8 did not consult an independent expert; *Ground 2*, the Petitioner argues the trial counsel
9 was ineffective because counsel did not properly and timely notice the defense of
10 superseding cause pursuant to Ariz. R. Crim. P. 15.2; *Ground 3*, the Petitioner argues trial
11 counsel was ineffective because counsel failed to request the appropriate jury instruction
12 relative to superseding cause; and *Ground 4*, the Petitioner argues the trial counsel was
13 ineffective because counsel failed to adequately cross examine the medical examiner with
14 facts contained in the discovery (Doc. 1 at 19-24). Respondents argue that the claims of
15 the Petitioner are unexhausted, procedurally defaulted and that the Petition should be
16 denied (Doc. 49).

17 Judge Bade concluded the Petitioner’s claims are procedurally barred from federal
18 habeas corpus review (Doc. 55). Additionally, the magistrate judge further concluded
19 that the Petitioner has not established a basis to overcome that bar (Id).

20 In his Objections to the Report and Recommendation, Petitioner articulated his
21 displeasure with Judge Bade’s findings and conclusions (Doc. 58 at 1-5). The Petitioner
22 also repeats the same arguments that were laid out in the Petition (Doc. 1 at 19-24) and
23 Traverse (Doc. 54 at 1-6).

24 A district judge “may accept, reject, or modify, in whole or in part, the findings or
25 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). When a party files
26 a timely objection to an R&R, the district judge reviews *de novo* those portions of the
27 R&R that have been “properly objected to.” Fed. R. Civ. P. 72(b). A proper objection
28 requires specific written objections to the findings and recommendations in the R&R. *See*

1 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); 28 U.S.C. §
2 636(b)(1). It follows that the Court need not conduct any review of portions to which no
3 specific objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also Thomas v.*
4 *Arn*, 474 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review is
5 judicial economy). Further, a party is not entitled as of right to *de novo* review of
6 evidence or arguments which are raised for the first time in an objection to the R&R, and
7 the Court's decision to consider them is discretionary. *United States v. Howell*, 231 F.3d
8 615, 621-622 (9th Cir. 2000).

9 The Court finds that although the Petitioner filed objections (Doc. 54), he failed to
10 provide specific written objections to the findings and recommendations in the R&R.
11 Nonetheless, the Court has undertaken an extensive review of the sufficiently developed
12 record and the objections to the findings and recommendations in the very detailed R&R,
13 without the need for an evidentiary hearing.

14 After conducting a *de novo* review of the issues and objections, the Court reaches
15 the same conclusions reached by Judge Bade. Specifically, the Court finds the claims of
16 the Petitioner are procedurally barred from federal habeas corpus review. Additionally,
17 the Petitioner has failed to establish a basis to overcome that bar.

18 Having carefully reviewed the record, the Petitioner has not shown that he is
19 entitled to habeas relief. Finding none of Petitioner's objections have merit, the R&R
20 will be adopted in full. Accordingly,

21 **IT IS ORDERED:**

22 1. That the Magistrate Judge's Report and Recommendation (Doc. 55) is
23 **accepted** and **adopted** by the Court;

24 2. That the Petitioner's Objections (Doc. 58) are **overruled**;

25 3. That the Petition for Writ of Habeas Corpus (Doc. 1) is **denied** and this
26 action is **dismissed with prejudice**;

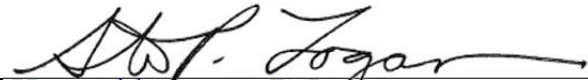
27 4. That a Certificate of Appealability and leave to proceed *in forma pauperis*
28 on appeal are **denied** because the dismissal of the Petition is justified by a plain

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procedural bar and reasonable jurists would not find the ruling debatable; and

5. That the Clerk of Court shall **terminate** this action.

Dated this 25th day of August, 2017.


Honorable Steven P. Logan
United States District Judge