

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Noelle Susanne Widder,

10 Plaintiff,

11 v.

12 Charles Ryan, *et al.*,

13 Defendants.  
14

No. CV-14-00739-PHX-JJT

**ORDER**

15 Before the Court is the Report and Recommendation of United States Magistrate  
16 Judge Eileen S. Willett (Doc. 17) (“R & R”) recommending that the Court deny and  
17 dismiss with prejudice Petitioner Noelle Widder’s Petition for Writ of Habeas Corpus  
18 (Doc. 1). No objection to the R & R has been filed and the time to so file has expired.

19 This Court “may accept, reject, or modify, in whole or in part, the findings or  
20 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party  
21 timely objects to a magistrate judge's report and recommendation, the Court must “make  
22 a de novo determination of those portions of the [report and recommendation] to which  
23 objection is made.” 28 U.S.C. § 636(b)(1). But where a party fails to object, the Court is  
24 not required to conduct “any review at all . . . of any issue that is not the subject of an  
25 objection.” *Thomas v. Arn*, 474 U.S. 140, 149, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985).  
26 Indeed, the Ninth Circuit has recognized that a district court is not required to review a  
27 magistrate judge's report and recommendation where no objections have been filed. *See*  
28 *United States v. Reyna–Tapia*, 328 F.3d 1114 (9th Cir.2003) (disregarding the standard of

1 review employed by the district court when reviewing a report and recommendation to  
2 which no objections were made); *see also Schmidt v. Johnstone*, 263 F.Supp.2d 1219,  
3 1226 (D.Ariz.2003) (reading the Ninth Circuit's decision in *Reyna–Tapia* as adopting the  
4 view that district courts are not required to review “any issue that is not the subject of an  
5 objection.”). Thus, in this matter the Court may accept the recommendation without  
6 review. Even on a *de novo* review of Judge Willett’s Cobb's R & R, however, the Court  
7 finds good cause to adopt it here.

8         Petitioner’s judgment became final, at the very latest, at the conclusion of direct  
9 review of her conviction. 28 U.S.C. § 2244(d)(1)(A). Under Arizona law, where a  
10 defendant was convicted by plea rather than at trial, that direct review is provided in the  
11 form of an “of-right” petition for post-conviction relief pursuant to Rule 32 of the  
12 Arizona Rules of Criminal Procedure. Because Petitioner was resentenced in the  
13 underlying criminal matter after her first Rule 32 proceeding, she was entitled to a second  
14 Rule 32 “of-right” proceeding. *State v. Cleere*, 138 P.3d 1181, 1184 n.2 (Ariz. Ct. App.  
15 2006) (“Although this review relates to Cleere’s second Rule 32 petition, that petition  
16 was “of right” because it followed a conviction pursuant to a plea agreement and the trial  
17 court’s resentencing. *See* Ariz. R. Crim. P. 32.1.”) It was therefore upon the conclusion of  
18 her second Rule 32 proceeding that Petitioner’s conviction became final for purposes of  
19 AEDPA and its one-year statute of limitation began to run. *Summers v. Schriro*, 481 F.3d  
20 710, 711, 716–17 (9th Cir. 2007).

21         The state trial court denied relief on Petitioner’s second Rule 32 of-right PCR  
22 notice no later than November 9, 2011. Petitioner thereafter had 35 days, or until  
23 December 14, 2011, to seek review of that denial in the Arizona Court of Appeals. She  
24 did not do so, and so her conviction became final on December 15, 2011 for purposes of  
25 AEDPA. Petitioner therefore had until no later than December 14, 2012 to file her  
26 petition for habeas review. She did not file her petition until April 9, 2014. The Petition is  
27 time-barred under the one-year statute of limitations set forth in the Anti-Terrorism and  
28 Effective Death Penalty Act of 1996, 110 Stat. 1214. Accordingly,

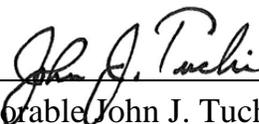
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IT IS ORDERED adopting Magistrate Judge Willett's R&R (Doc. 17) in its entirety and incorporating same into this Order.

IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) and dismissing this matter with prejudice.

IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to proceed *in forma pauperis* on appeal in this matter because the dismissal of the instant Petition is justified by a plain procedural bar and jurists of reason would not find the procedural ruling debatable.

Dated this 26th day of October, 2015.

  
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Honorable John J. Tuchi  
United States District Judge