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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Genaro Evenicio Pina-Aguirre,
Petitioner,
v.
Charles L. Ryan, et al.,
Respondents.

No. CV-14-00860-PHX-DJH
ORDER

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 Mark E. Aspey (Doc. 20). The Petitioner asserts three grounds for relief. First, Petitioner contends that state trial court should have, *sua sponte*, conducted a voluntariness hearing prior to admitting as evidence Petitioner's post-arrest statements to the police. Second, the Petitioner claims that he was denied effective assistance of counsel because his counsel did not: (1) request a voluntariness hearing; (2) challenge the victim's identification of him; and (3) did not impeach a detective with an interview transcript. Third, the Petitioner maintains that by not retrieving fingerprints and DNA evidence, "the police conducted a 'faulty investigation[.]'" R&R (Doc. 20) at 15:6 (emphasis omitted).

After carefully considering each of these three claims, *see id.* at 9-16, Magistrate Judge Aspey soundly concluded that "[t]he state court's last reasoned decision denying [Petitioner's] claims was not clearly contrary to nor an unreasonable application of federal

1 law." (*Id.* at 16:16-17).

2 In recommending denial of the Petition and dismissal with prejudice, Magistrate
3 Judge Aspey explicitly advised the parties that they had "fourteen (14) days from the date
4 of service of a copy of" that R&R "within which to file specific objections with the
5 Court." R&R (Doc. 20) at 16:24-25. Further, Magistrate Judge Aspey explicitly advised
6 that "[f]ailure to file timely objections to any factual or legal determinations of the
7 Magistrate Judge will be considered a waiver of a party's right to do novo appellate
8 consideration of those issues." (*Id.* at 17:2-4) (citing *United States v. Reyna-Tapia*, 328
9 F.3d 1114, 1121 (9th Cir. 2003) (en banc)). The Magistrate Judge was equally explicit
10 that "[f]ailure to timely file objections to any factual or legal determinations of the
11 Magistrate Judge will constitute a waiver of a party's right to appellate review of the
12 findings of fact and conclusions of law in an order or judgment entered pursuant to the
13 recommendation of the Magistrate Judge." (*Id.* at 17:5-8).

14 The parties have not filed objections and the time to do so has expired. Absent
15 any objections, the Court is not required to review the findings and recommendations in
16 the R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (The relevant provision of the
17 Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C), "does not on its face require any
18 review at all . . . of any issue that is not the subject of an objection."); *Reyna-Tapia*, 328
19 F.3d at 1121 (same); Fed.R.Civ.P. 72(b)(3) ("The district judge must determine de novo
20 any part of the magistrate judge's disposition that has been properly objected to.").

21 Nonetheless, the Court has reviewed the R&R and agrees with its findings and
22 recommendations. The Court will, therefore, accept the R&R, deny the Petition and
23 dismiss this matter with prejudice. *See* 28 U.S.C. § 636(b)(1)(C) ("A judge of the court
24 may accept, reject, or modify, in whole or in part, the findings or recommendations made
25 by the magistrate judge."); Fed.R.Civ.P. 72(b)(3) (same).

26 Accordingly,

27 **IT IS ORDERED ACCEPTING AND ADOPTING** as an Order of this Court
28 Magistrate Judge Aspey's R&R (Doc. 20);

1 **IT IS FURTHER ORDERED DENYING AND DISMISSING WITH**
2 **PREJUDICE** the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc.
3 1);

4 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
5 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*
6 on appeal are **DENIED** because Petitioner has not made a substantial showing of the
7 denial of a constitutional right; and

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

10 Dated this 6th day of January, 2015.

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14 Honorable Diane J. Humetewa
15 United States District Judge
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