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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brian Thomas Eftenoff,

Petitioner,

v.

Charles L. Ryan, Director of the
Department of Corrections; The Attorney
General of the State of Arizona,

Respondents.

No. CV-14-01023-PHX-NVW (MHB)

**ORDER
and
DENIAL OF CERTIFICATE OF
APPEALABILITY AND IN FORMA
PAUPERIS STATUS**

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Michelle H. Burns (Doc. 47) regarding petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be denied and dismissed with prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 32 (citing 28 U.S.C. § 636(b)(1); Rules 72, 6(a), 6(b), Federal Rules of Civil Procedure. Petitioner filed objections on December 14, 2015 (Doc. 48). Respondents filed a response to Petitioner’s objections on December 28, 2015 (Doc. 50).

The Court has considered the objections and responses and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). The Court agrees with the Magistrate Judge’s determinations, accepts the recommended decision within the

1 meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner’s objections. *See* 28
2 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole
3 or in part, the findings or recommendations made by the magistrate”).

4 IT IS THEREFORE ORDERED that Report and Recommendation of the
5 Magistrate Judge (Doc. 47) is accepted.

6 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying
7 and dismissing Petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28
8 U.S.C. § 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

9 Having considered the issuance of a Certificate of Appealability from the order
10 denying Petitioner’s Petition for a Writ of Habeas Corpus, a Certificate of Appealability
11 is denied because dismissal of the Petition is justified by a plain procedural bar
12 (Petitioner’s Claims 4a, 4c, 7a), procedural default (Claim 8b), or lack of a substantial
13 showing of the denial of a constitutional right (Claims 7d, 8a) upon which reasonable
14 jurists would disagree.

15 Dated this 25th day of April, 2016.

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19 Neil V. Wake
20 United States District Judge
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