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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Tony Jeremiah Edwards,

No. CV-14-1547-PHX-DJH

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Petitioner,

ORDER

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v.

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Charles L. Ryan, et al.,

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Respondents.

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This matter is before the Court on Petitioner's Petition for Writ of Habeas Corpus (the "Petition") pursuant to 28 U.S.C. § 2254 (Doc. 1) and the Report and Recommendation ("R&R") issued by United States Magistrate Judge David K. Duncan (Doc. 18). Pursuant to a plea agreement, Petitioner pled guilty to, and was convicted of, one count of drive-by shooting and one count of discharging a firearm at a structure. (Doc. 18 at 3). The stipulated sentence in the plea agreement, which the Superior Court Judge imposed, mandated 10 years in prison for the drive-by shooting and a consecutive term of 15 years in prison for discharging a firearm at a structure. (*Id.* at 3-4).

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Petitioner raised several claims for relief in the Petition, alleging that his rights were violated when he failed to receive the Superior Court's orders; that the Pinal County Attorney's Office discriminated against him on the basis of race during the plea bargaining process; and that he received ineffective assistance of counsel when his lawyer made racist comments to him, failed to investigate alleged defects in the indictment, and failed to investigate the racially discriminatory plea bargain process.

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1 (Doc. 18 at 5-6). After consideration and analysis of the issues, Judge Duncan concluded
2 that Petitioner failed to exhaust his state court remedies for the claims asserted in this
3 action, and that he is now barred from doing so. (*Id.* at 6-7). Accordingly, Judge Duncan
4 recommends the Petition be denied and dismissed with prejudice. (*Id.* at 9).

5 Judge Duncan advised the parties that they had fourteen days to file objections and
6 that the failure to file timely objections "may result in the acceptance of the Report and
7 Recommendation by the district court without further review." (Doc. 18 at 10) (citing
8 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)). The
9 parties have not filed objections and the time to do so has expired. Absent any
10 objections, the Court is not required to review the findings and recommendations in the
11 R&R. See *Thomas v. Arn*, 474 U.S. 140, 149 (1989) (The relevant provision of the
12 Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C), "does not on its face require any
13 review at all . . . of any issue that is not the subject of an objection."); *Reyna-Tapia*, 328
14 F.3d at 1121 (same); Fed.R.Civ.P. 72(b)(3) ("The district judge must determine de novo
15 any part of the magistrate judge's disposition that has been properly objected to.").

16 Nonetheless, the Court has reviewed the R&R and agrees with its findings and
17 recommendations. The Court will, therefore, accept the R&R and deny the Petition. See
18 28 U.S.C. § 636(b)(1)(C) ("A judge of the court may accept, reject, or modify, in whole
19 or in part, the findings or recommendations made by the magistrate judge.");
20 Fed.R.Civ.P. 72(b)(3) (same).

21 Accordingly,

22 **IT IS ORDERED** that Magistrate Judge Duncan's R&R (Doc. 18) is **accepted**
23 and **adopted** as the order of this Court.

24 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus
25 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **denied** and **dismissed with prejudice**.


26 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
27 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*
28 on appeal are **denied** because dismissal of the Petition is justified by a plain procedural

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bar and jurists of reason would not find the procedural ruling debatable.

IT IS FURTHER ORDERED that the Clerk of Court shall terminate this action and enter judgment accordingly.

Dated this 13th day of August, 2015.



Honorable Diane J. Humetewa
United States District Judge