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**NOT FOR PUBLICATION**

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

9 Alejandro Lopez-Zamarripa,

10                   Petitioner,

11 v.

12 Charles L Ryan and Attorney General of  
13 the State of Arizona,

14                   Respondents.

No. CV-15-00128-PHX-DJH

**ORDER**

15           Pending before the Court is *pro se* Petitioner's Petition for Writ of Habeas Corpus  
16 pursuant to 28 U.S.C. § 2254 (Doc. 1) to which Respondents filed an Answer (Doc. 16).  
17 Subsequently, United States Magistrate Judge Bridget S. Bade issued a Report and  
18 Recommendation ("R&R") (Doc 20). Following a thorough and comprehensive analysis,  
19 Judge Bade recommended denial of the Petition. Petitioner filed timely objections to the  
20 R&R (Doc. 21). Respondents filed no objections. The Court now issues its ruling.

21 **I. R&R**

22           The R&R includes a detailed factual and procedural background. The Petitioner  
23 asserted only two grounds for relief in his Petition. Taking into account Petitioner's *pro*  
24 *se* status, however, and "liberally constru[ing] [his] Petition and memorandum[.]" Judge  
25 Bade "identifie[d] . . . eleven claims of ineffective assistance of counsel ("IAC")[.]"  
26 (Doc. 20 at 12:3-5). In the R&R, Judge Bade painstakingly analyzed each of those  
27 eleven claims, finding that eight of them were procedurally barred and that four of those  
28 eight also lacked merit. Then, as to the eight claims which she deemed procedurally

1 barred, Judge Bade analyzed whether Petitioner could establish a basis to overcome the  
2 procedural bar, and she found that he could not. As to the three IAC claims which were  
3 properly before the Court, Judge Bade found that, nonetheless, they lacked merit.

4 In light of the foregoing, Judge Bade found that Petitioner was not entitled to  
5 habeas corpus relief, and recommended denial of his Petition. Judge Bade further  
6 recommended denial of a Certificate of Appealability and leave to proceed *in forma*  
7 *pauperis* on appeal because Petitioner did not make the requisite showing. (Doc. 20 at  
8 41:11-15). Judge Bade also instructed the parties that they “had fourteen days from the  
9 date of service of a copy of [her] recommendation within which to file specific written  
10 objections with the Court.” (*Id.* at 41:19-21) (citations omitted). Judge Bade was  
11 equally explicit in instructing the parties that “[f]ailure to file timely objections to any  
12 factual determinations of the Magistrate Judge may be considered a waiver of a party’s  
13 right to appellate review of the findings of fact in an order or judgment entered pursuant  
14 to the Magistrate Judge’s recommendation.” (*Id.* at 42:1-4) (citing Fed. R. Civ. P. 72).

## 15 **II. Petitioner’s Objections**

16 Petitioner timely filed an objection to the R&R (Doc. 21). Preliminarily,  
17 Petitioner broadly states that “[c]ontrary to [Judge Bade’s] assertions[,]” he did  
18 “sufficiently and fairly present[] the claims in his state post-conviction relief petition  
19 which are rife with constitutional deprivations and which show that the proceedings were  
20 fundamentally unfair and prejudicial in scope.” (*Id.* at 2). In similarly broad language,  
21 the Petitioner concludes that his claims were “fairly and fully . . . presented to the State  
22 Courts and should not be ruled as being barred procedurally.” (*Id.* at 18). Petitioner thus  
23 urges this Court not to adopt the R & R and to “look to the merits of [his] habeas  
24 petition.” (*Id.*).

25 As to Petitioner’s third IAC claim, that is, his trial counsel’s failure to object to the  
26 jury instruction regarding molestation, Petitioner “objects to the [R & R’s] conclusion  
27 that this claim lacks merit[.]” (Doc. 21 at 7). Plaintiff further “states that the record  
28 supports his contention that [this particular claim] was fairly presented to the Arizona  
Courts but they refused to entertain or address this issue.” (*Id.*) In his ninth IAC claim,

1 Plaintiff asserted that his “trial counsel was ineffective for trial counsel was ineffective  
2 for failing to object to the prosecutor’s misconduct of presenting as aggravating  
3 circumstances prior convictions that were not properly attributed to Petitioner.” (Doc. 20  
4 at 27:2-4) (citations omitted). Petitioner “objects to the finding that” this claim is  
5 “procedurally barred or precluded where the Arizona Court of Appeals accepted the  
6 Petition for review and chose not to address this matter[.]” (Doc. 21 at 10). Turning to  
7 claim ten, that Petitioner’s “trial counsel was ineffective for failing to object to the judge,  
8 rather than a jury, finding the aggravating factors, including the prior convictions that the  
9 State erroneously alleged were attributed to Petitioner[.]” (Doc. 20 at 28:23-35) (citation  
10 omitted), Judge Bade found that this claim was “technically exhausted and procedurally  
11 barred[.]” (*Id.* at 29:17). Assigning “error” to this finding, Petitioner “states that it is  
12 clear that he has established a basis to overcome the procedural bar[.]”(Doc. 21 at 12).  
13 Further, if this Court agrees with Judge Bade and finds that seven of his claims are  
14 procedurally barred,<sup>1</sup> Petitioner states “all show and demonstrate cause[.]” to overcome  
15 that procedural bar. (Doc. 21 at 12).

16 In the remainder of his objection, Petitioner essentially reiterates the arguments in  
17 his Petition, stating that he has fairly presented his claims to the Arizona state courts but  
18 they refused to address them. Furthermore, Petitioner apparently concurs with the R&R  
19 findings that he failed to raise certain claims in the state courts, but he nonetheless urges  
20 this Court to review them.

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27 <sup>1</sup> Actually, Judge Bade found that eight of Petitioner’s claims (one, two, three,  
28 five, six, eight, nine, and ten) were all procedurally defaulted. (Doc. 20 at 30:2-3).  
Petitioner omits claim eight, so presumably he agrees that this claim is procedurally  
barred.

1 **III. Standard of Review**

2 This Court must “make a de novo determination of those portions of the report or  
3 specified proposed findings or recommendations to which” a Petitioner objects. 28  
4 U.S.C. § 636(b)(1)(C); *see also* Fed.R.Civ.P. 72(b)(3) (“The district judge must  
5 determine de novo any part of the magistrate judge’s disposition that has been properly  
6 objected to.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (same).  
7 Further, this Court “may accept, reject, or modify, in whole or in part, the findings or  
8 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C); Fed.R.Civ.P.  
9 72(b)(3). At the same time, however, the relevant provision of the Federal Magistrates  
10 Act, 28 U.S.C. § 636(b)(1)(C), “does *not* on its face *require any review at all . . .* of any  
11 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1989)  
12 (emphasis added); *see also* *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005)  
13 (“Of course, de novo review of a R & R is only required when an objection is made to the  
14 R & R, [*Reyna– Tapia*,] 328 F.3d [at] 1121. . . (“Neither the Constitution nor the [Federal  
15 Magistrates Act] requires a district judge to review, de novo, findings and  
16 recommendations that the parties themselves accept as correct”)[.]”). Likewise, it is  
17 well-settled that “failure to object to a magistrate judge's factual findings waives the  
18 right to challenge those findings[,]” *Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir.  
19 2015) (quoting *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (internal  
20 quotation marks omitted) (footnote omitted)), as Judge Bade advised the parties herein.  
21 (See Doc. 20 at 42:1-4) (citation omitted). Finally, “[a]lthough the Ninth Circuit has not  
22 yet ruled on the matter, other circuits and district courts within the Ninth Circuit have  
23 held when a petitioner raises a general objection to an R & R, rather than specific  
24 objections, the Court is relieved of any obligation to review it.” *Martin v. Ryan*, 2014 WL  
25 5432133, at \*2 (D.Ariz. 2014) (citing *See, e.g., Warling v. Ryan*, 2013 WL 5276367, at  
26 \*2 (D.Ariz. 2013) (“[A] general objection ‘has the same effect as would a failure to  
27 object.’”); *Gutierrez v. Flannican*, 2006 WL 2816599 (D.Ariz. 2006) (citing *Goney v.*  
28 *Clark*, 749 F.2d 5, 7 (3d Cir. 1984); *Lockert v. Faulkner*, 843 F.2d 1015, 1019 (7th  
Cir.1988); *Howard v. Sec. of Health and Human Servs.*, 932 F.2d 505, 509 (6th

1 Cir.1991); *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th  
2 Cir.1996)).

#### 3 **IV. Discussion**

4 Petitioner did filed timely objections, but he did not object to any of the  
5 information included in the R&R’s factual and procedural background section. Thus,  
6 consistent with 28 U.S.C. § 636(b)(1)(C), and the case law construing it, the Court is not  
7 reviewing that particular section at all. For a different reason, the Court finds that it has  
8 no independent obligation to engage in a *de novo* review of those portions of the R & R  
9 to which Petitioner did object. Petitioner has not triggered *de novo* review because, as is  
10 readily apparent, his objections lack the requisite specificity. Were this Court to  
11 undertake *de novo* review of Petitioner’s general objections, it would defeat the “obvious  
12 purpose” of the specific objection requirement, which “is judicial economy—to permit  
13 magistrate judges to hear and resolve matters not objectionable to the parties.” *See*  
14 *Warling*, 2013 WL 5276367, at \*2 (citing *Thomas*, 474 U.S. at 149; *Reyna–Tapia*, 328  
15 F.3d at 1121). “Because *de novo* review of an entire R & R would defeat the efficiencies  
16 intended by Congress, a general objection “has the same effect as would a failure to  
17 object.” *See id.* (citing *Howard*, 932 F.2d at 509; *Haley v. Stewart*, 2006 WL 1980649, at  
18 \*2 (D.Ariz. 2006)). In light of the foregoing, the Court has no obligation to review  
19 Petitioner’s general objections to the R & R. *See id.* at \*2 (citing *Thomas*, 474 U.S. 149).

#### 20 **V. Conclusion**

21 **IT IS ORDERED** that Magistrate Judge Bade’s Report and Recommendation  
22 (Doc. 20) is **ACCEPTED** and **ADOPTED** as the Order of this Court.

23 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus  
24 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** and **DISMISSED WITH**  
25 **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 many of Petitioner’s claims is justified by a  
plain procedural bar and reasonable jurists would not find the ruling debatable and

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because Petitioner has not made a substantial showing of the denial of a constitutional right.

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

**Dated** this 19th day of October, 2016

