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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Charles Edward Byrd,
Petitioner,
v.
Charles L. Ryan; et al.,
Respondents.

No. CV-15-02263-PHX-NVW (DKD)

**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 David K. Duncan (Doc. 15) 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 4 (citing 28 U.S.C. § 636(b)(1); Rules 72, 6(a), 6(b), Federal Rules of Civil Procedure. Petitioner filed objections on April 15, 2016 (Doc. 16).

Petitioner has also filed a Motion to Stay or Motion to Dismiss Petition Without Prejudice so Petitioner Can Exhaust Claim in State Court. (Doc. 17.) For the reasons stated in the R&R, any state court petition would be barred at this time. Therefore, this Motion will be denied as futile.

The Court has considered the objections 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

1 Recommendation to which specific objections are made). The Court agrees with the
2 Magistrate Judge's determinations, accepts the recommended decision within the
3 meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner's objections. See 28
4 U.S.C. § 636(b)(1) (stating that the district court "may accept, reject, or modify, in whole
5 or in part, the findings or recommendations made by the magistrate").

6 IT IS THEREFORE ORDERED that Report and Recommendation of the
7 Magistrate Judge (Doc.15) is accepted.

8 IT IS FURTHER ORDERED that Petitioner's Motion to Stay or Motion to
9 Dismiss Petition Without Prejudice so Petitioner Can Exhaust Claim in State Court (Doc.
10 17) is denied.

11 Having considered the issuance of a Certificate of Appealability from the order
12 denying Petitioner's Petition for a Writ of Habeas Corpus, a Certificate of Appealability
13 and leave to proceed *in forma pauperis* on appeal are denied because dismissal of the
14 Petition is justified by a plain procedural bar and jurists of reason would not find the
15 ruling debatable.

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

19 Dated this 18th day of April, 2016.

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22 _____
23 Neil V. Wake
24 United States District Judge
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