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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 James Albert Ashpole, ) No. CV-15-02300-PHX-SPL  
9 )  
10 Petitioner, ) **ORDER**  
11 v. )  
12 Justin Beresky, et al., )  
13 Respondents. )  
14 \_\_\_\_\_ )

15 The Court has before it Petitioner's Amended Petition for Writ of Habeas Corpus  
16 pursuant to 28 U.S.C. § 2254. (Doc. 5.) The Court has also received Respondents'  
17 Limited Answer (Doc. 13), Petitioner's Response to the Limited Answer (Doc. 15),  
18 Supplemental Exhibits from Respondent (Doc. 17), the first Report and Recommendation  
19 of Magistrate Judge Bridget S. Bade and the Order of this Court. (Docs. 18, 19.) We  
20 also have before us Respondents' Supplemental Limited Answer (Doc. 53), Petitioner's  
21 Reply Response to Respondents' Supplemental Limited Answer (Doc. 54), the Report  
22 and Recommendation of the Magistrate Judge (Doc. 55), Petitioner's Objections (Doc.  
23 56), Response to the Petitioner's Objections (Doc. 57), and the Petitioner's Notice of  
24 Procedural Bar. (Doc. 58.)

25 Petitioner argues in Ground One that the aggravated sentence has violated his right  
26 to a jury trial under *Blakely v. Washington*, 542 U.S. 296 (2004). (Doc. 5 at 6, 14-16.) In  
27 Ground Two, Petitioner argues one of the aggravating factors, the existence of prior  
28 convictions, had been improper because those convictions were too remote under Arizona

1 Law. (*Id.* at 7, 16-17.) Respondents argue the petition must be dismissed with prejudice  
2 because both habeas claims are technically exhausted and precluded under the  
3 independent and adequate state-ground doctrine. Additionally, Respondents argue  
4 Petitioner does not allege a basis to excuse the procedural defaults, which he could not  
5 otherwise have established given he had been aware of the factual basis of both claims  
6 prior to filing his PCR petition. (Docs. 13, 17, 53.) Judge Bade concluded the  
7 Petitioner's claims are procedurally barred. (Doc. 55.)

8 A district judge "may accept, reject, or modify, in whole or in part, the findings or  
9 recommendations made by the magistrate judge." 28 U.S.C. § 636(b). When a party files  
10 a timely objection to an R&R, the district judge reviews *de novo* those portions of the  
11 R&R that have been "properly objected to." Fed. R. Civ. P. 72(b). A proper objection  
12 requires specific written objections to the findings and recommendations in the R&R. *See*  
13 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); 28 U.S.C. §  
14 636(b)(1). It follows that the Court need not conduct any review of portions to which no  
15 specific objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also Thomas v.*  
16 *Arn*, 474 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review is  
17 judicial economy). Further, a party is not entitled as of right to *de novo* review of  
18 evidence or arguments which are raised for the first time in an objection to the R&R, and  
19 the Court's decision to consider them is discretionary. *United States v. Howell*, 231 F.3d  
20 615, 621-622 (9th Cir. 2000).

21 Petitioner has presented the same arguments that he initially made in his Petition  
22 for Writ of Habeas Corpus. (Doc. 5, 15, 54.) This Court has, nonetheless, undertaken an  
23 extensive review of the sufficiently developed record and the objections to the findings  
24 and recommendations in the very detailed R&R, without the need for an evidentiary  
25 hearing or appointing counsel for the Petitioner. After conducting a *de novo* review of the  
26 issues and objections, the Court reaches the same conclusions reached by Judge Bade.  
27 Specifically, the Court finds the Petitioner claims are procedurally barred.

28 Having carefully reviewed the record, the Petitioner has not shown that he is

1 entitled to habeas relief. The R&R will be adopted in full. Accordingly,

2 **IT IS ORDERED:**

3 1. That the Magistrate Judge's Report and Recommendation (Doc. 55) is  
4 **accepted** and **adopted** by the Court;

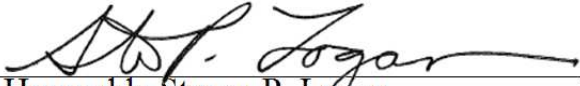
5 2. That the Petitioner's Objections (Doc. 56) are **overruled**;

6 3. That the Petition for Writ of Habeas Corpus (Doc. 5) is **denied** and this  
7 action is **dismissed with prejudice**;

8 4. That a Certificate of Appealability and leave to proceed *in forma pauperis*  
9 on appeal are **denied** because the dismissal of the Petition is justified by a plain  
10 procedural bar and reasonable jurists would not find the ruling debatable; and

11 5. That the Clerk of Court shall **terminate** this action.

12 Dated this 27<sup>th</sup> day of April, 2018.

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14   
15 Honorable Steven P. Logan  
16 United States District Judge  
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