

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Carlester Sharrod Hayes,

10 Petitioner,

11 v.

12 Arizona, State of,

13 Respondent.
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No. CV-15-02435-PHX-JJT

ORDER

15 At issue is United States Magistrate Judge James F. Metcalf's Report and
16 Recommendation ("R&R")(Doc. 26) concluding that the Court should deny and dismiss
17 the pending Second Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §
18 2254 (Doc. 10). Petitioner timely filed a Response to All Parties (Doc. 27), which this
19 Court construes as his Objections to the R&R. Therefore the Court reviews the R&R *de*
20 *novo*. Upon that review, the Court adopts the R&R in its entirety, and for the reasons
21 competently and clearly stated in the R&R, the Court will deny and dismiss the Second
22 Amended Petition with prejudice as both grounds for relief contained therein were not
23 exhausted in the state court, and are now procedurally defaulted; no statutory tolling
24 applied; and Petitioner failed to show cause and prejudice for equitable tolling. Finally,
25 Petitioner has failed to demonstrate any qualification for the *Schlupp* gateway.

26 Petitioner's Objections fail to address the issues raised in the R&R. He spends
27 more than half of his two-page Objection arguing the merits of his ground that the police
28 report in his case is inconsistent with the charging document, but the Court does not reach

1 the merits of his Petition until he has satisfied the procedural requirements of AEDPA.
2 Petitioner does attempt to reargue his mental impairment as a reason to invoke equitable
3 tolling, but he raises no argument or fact that the R&R has not already addressed and
4 correctly dispensed.

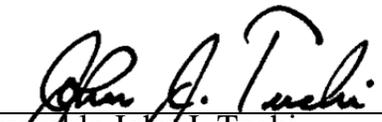
5 For all of the above reasons, and as set forth in the R&R,

6 IT IS ORDERED adopting the R&R in its entirety

7 IT IS FURTHER ORDERED denying and dismissing with prejudice the Second
8 Amended Petition for Habeas Corpus (Doc. 10).

9 IT IS FURTHER ORDERED denying a Certificate of Appealability in this matter
10 as reasonable jurists would not find the Court's assessment of the claims debatable or
11 wrong.

12 Dated this 7th day of September, 2016.

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15 Honorable John J. Tuchi
16 United States District Judge
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