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

9 Bradley Jon King,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.

No. CV 17-01676-PHX-GMS (JZB)

**ORDER**

14  
15 Pending before the Court are Petitioner Bradley Jon King's Petition for Writ of  
16 Habeas Corpus (Doc. 1), and United States Magistrate Judge John Z. Boyle's Report and  
17 Recommendation ("R&R"), which recommends that the Court deny the Petition. (Doc.  
18 18). Because Petitioner King timely filed objections to part of the R&R, (Doc. 19), the  
19 Court will review those issues *de novo*. *United States v. Reyna Tapia*, 328 F.3d 1114,  
20 1121 (9th Cir. 2003). For the following reasons, the Court denies the petition and adopts  
21 the R&R.

22 **BACKGROUND**

23 On May 2, 2012, Petitioner Bradley Jon King was convicted by a jury of Burglary,  
24 Theft, and Possession of Burglary Tools in Maricopa County Superior Court. He was  
25 sentenced to a term of imprisonment totaling 25 years. (Doc. 13, at 8–13). King  
26 subsequently appealed his conviction to the Arizona Court of Appeals, which reversed  
27 his convictions for Burglary and Possession of Burglary Tools, but affirmed his  
28

1 conviction and sentence for Theft. (*Id.* at 67–76). King is currently serving a sentence of  
2 11.25 years for his remaining conviction.

3 King then filed a notice for post-conviction relief in state court. (Doc. 13 at 77–  
4 81). His appointed post-conviction counsel found that there were no colorable issues to  
5 raise. (*Id.* at 83). So King proceeded to file his petition for post-conviction relief pro se.  
6 (*Id.* at 85–90). In his initial state post-conviction relief petition, King raised a single  
7 claim, alleging that his counsel at trial was ineffective for failing to properly  
8 communicate the consequences of declining a specific plea offer before it expired. (Doc.  
9 14 at 26). The Maricopa County Superior Court considered this claim and found that it  
10 was not colorable, and accordingly denied his petition for post-conviction relief. (*Id.*, at  
11 30–35). King appealed this determination. (*Id.* at 36–49). The Arizona Court of Appeals  
12 found that King had abandoned his ineffective assistance of counsel claim that was  
13 presented to the Superior Court, and instead was arguing a different ineffective assistance  
14 claim that his counsel had failed to present to him either of two plea offers made by the  
15 government. (*Id.* at 59–61). But because King failed to present *this second* ineffective  
16 assistance claim to the Superior Court, the Court of Appeals found that both claims were  
17 barred from review. (*Id.* at 61).

18 On May 30, 2017, King timely filed his Petition in federal court which raises two  
19 grounds for relief. (Doc. 1). First, King argues—as he did in his original post-conviction  
20 relief notice in state court—that his trial counsel was ineffective because the attorney did  
21 not properly communicate the consequences of declining a specific plea offer before it  
22 expired. (*Id.* at 6). Second, King argues that the state post-conviction trial and appeals  
23 courts did not properly evaluate his claims and abused their discretion. (*Id.* at 7).

24 On February 14, 2018, Magistrate Judge John Z. Boyle issued the R&R. (Doc.  
25 18). The R&R found that both of King’s claims are timely, but procedurally defaulted.  
26 (*Id.* at 7). King then filed objections to Magistrate Judge Boyle’s R&R. (Doc. 19). In his  
27 objections, King argues that he is entitled to review of his ineffective assistance of  
28 counsel claim (Doc. 19 at 4), and that the Magistrate Judge failed to address his

1 “competency claim.” (*Id.* at 5). After considering King’s objections, the Court accepts  
2 the R&R.

### 3 DISCUSSION

#### 4 I. Legal Standard

5 The writ of habeas corpus affords relief to persons in custody in violation of the  
6 Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3). Review of  
7 Petitions for Habeas Corpus is governed by the Antiterrorism and Effective Death  
8 Penalty Act of 1996. 28 U.S.C. § 2244 *et seq.* For a state prisoner to receive review of his  
9 federal claims in federal court, he must first exhaust all available state remedies. 28  
10 U.S.C. 2254(b)(1)(A).

11 To exhaust state remedies, a prisoner must “fairly present” his claims to the  
12 appropriate state court. *See Coleman v. Thompson*, 501 U.S. 722, 731 (1991) (holding  
13 that “a state prisoner’s federal habeas petition should be dismissed if the prisoner has not  
14 exhausted available state remedies as to any of his federal claims”). A prisoner must  
15 describe “both the operative facts and the federal legal theory on which his claim is based  
16 so that the state courts [could] have a ‘fair opportunity’ to apply controlling legal  
17 principles to the facts bearing upon his constitutional claim.” *Kelly v. Small*, 315 F.3d  
18 1063, 1066 (9th Cir. 2003) (citations and internal quotation marks omitted). If a prisoner  
19 fails to “fairly present” his claims to the proper state court, his claims are procedurally  
20 defaulted and barred from habeas review. *Ylst v. Nunnemaker*, 501 U.S. 797, 802-05  
21 (1991). In Arizona, a petitioner does not exhaust a claim for purposes of federal review  
22 unless he has presented it to the state Court of Appeals. *Castillo v. McFadden*, 399 F.3d  
23 993, 998 (9th Cir. 2004).

24 In this context, a petitioner may overcome a state procedural bar for a single kind  
25 of claim—ineffective assistance of counsel at trial—by demonstrating “(1) ‘counsel in  
26 the initial-review collateral proceeding, where the claim should have been raised, was  
27 ineffective under the standards of *Strickland*,’ and (2) ‘the underlying ineffective-  
28 assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner

1 must demonstrate that the claim has some merit.” *Cook v. Ryan*, 688 F.3d 598, 607 (9th  
2 Cir. 2012) (citing *Martinez v. Ryan*, 566 U.S. 1, 12 (2012)) (internal citations omitted).  
3 *Martinez* is a “narrow exception to *Coleman*’s general rule.” *Davila v. Davis*, 137 S. Ct.  
4 2058, 2062 (2017).

## 5 **II. Analysis**

### 6 **A. Report and Recommendation on Count Two**

7 Magistrate Judge Boyle found that King’s second claim was procedurally  
8 defaulted. (Doc. 18 at 7). In his objection to the R&R, King states that he “has  
9 established points raised and ignored by . . . the magistrate Judge” and that he  
10 “incorporates his reasoning in his limited response ‘Ground Two’ to this objection” (Doc.  
11 19 at 6), but does not specifically articulate any objections to the Magistrate Judge’s  
12 finding that Count Two is procedurally defaulted. His objection merely reincorporates  
13 his initial arguments to the Magistrate Judge that were considered and rejected in the  
14 R&R.

15 Under Fed. R. Civ. Pro. 72(b)(2), objections made to the report and  
16 recommendation of a magistrate judge must be “specific.” If a petitioner only makes  
17 general objections to a report and recommendation, the district court is relieved of its  
18 obligation to review that portion of the report. *See e.g. Martin v. Ryan*, 2014 WL  
19 5432133, \*2 (D. Ariz. Oct. 24, 2014) (citing *Warling v. Ryan*, 2013 WL 5276367, at \*2  
20 (D. Ariz. Sept. 19 2013) (“[A] general objection ‘has the same effect as would a failure to  
21 object.”)). So the Court will accept the findings of the R&R with respect to Count Two.

### 22 **B. Count One: Ineffective Assistance of Counsel at Trial**

23 King argues that his rights were violated because his counsel failed to “apprise  
24 Defendant of the consequences upon the first plea offer timely . . . before the plea offer  
25 expired.” (Doc. 1 at 6). In his federal petition, King contends that he raised this claim at  
26 the Arizona Court of Appeals. (*Id.*). But the Court of Appeals found that King had  
27 abandoned this claim on appeal, where he instead asserted a *different*, ineffective  
28 assistance of counsel claim. Rather than appealing his argument that one of the plea

1 agreements that had been presented to him had not been adequately explained by counsel,  
2 he asserted that two plea bargains presented to counsel in his case were not provided by  
3 counsel to him. (Doc. 14 at 60).

4 Because King did not present the “operative facts” of the claim he makes here to  
5 the Arizona Court of Appeals, and instead presented a different ineffective assistance of  
6 counsel claim, the Court finds Count One is technically exhausted and procedurally  
7 defaulted. *See Coleman*, 501 U.S. at 732 (“[A] habeas petitioner who has failed to meet  
8 the State’s procedural requirements for presenting his federal claims has deprived the  
9 state courts of an opportunity to address those claims in the first instance. A habeas  
10 petitioner who has defaulted his federal claims in state court meets the technical  
11 requirements for exhaustion; there are no state remedies ‘available’ to him.”); *see also*  
12 *Kelly*, 313 F.3d at 1066; *Castillo*, 399 F.3d at 998-999.

13 King argues further that, even if state courts properly applied a procedural bar to  
14 his ineffective assistance of counsel claim, he is still entitled to review under *Martinez v.*  
15 *Ryan*. (Doc. 19 at 4). To overcome a procedural bar under *Martinez*, King must at least  
16 show that his ineffective assistance of counsel claim is “substantial.” *Cook*, 688 F.3d at  
17 607.

18 King argued initially in his post-conviction relief petition that an offer for a one  
19 year prison sentence was presented to him, and his counsel failed to apprise him of the  
20 effects of declining that plea offer. (Doc. 13 at 87). But as the trial court found in King’s  
21 post-conviction relief proceedings, there is no evidence outside of King’s assertions to  
22 indicate that this offer even *existed*, much less was communicated to him in an  
23 ineffective, constitutionally deficient manner. (Doc. 14. at 35). Because King has failed  
24 to demonstrate that his ineffective assistance of counsel claim is “substantial,” his claim  
25 remains procedurally defaulted and barred from further review. *See Coleman*, 501 U.S. at  
26 732 (“This Court will not review a question of federal law decided by a state court if the  
27 decision of that court rests on a state law ground that is independent of the federal  
28 question and adequate to support the judgment. This rule applies whether the state law

1 ground is substantive or procedural.”); *Bennett v. Mueller*, 322 F.3d 573, 580 (9th Cir.  
2 2003) (quoting *Coleman*, 501 U.S. at 729).

### 3 C. Competency

4 Finally, Petitioner King also objects to the Magistrate Judge’s R&R because he  
5 contends it fails to address his “competency claim.” (Doc. 19 at 5). King argues for the  
6 first time in these proceedings that he has both a state competency claim under Arizona  
7 Rule of Criminal Procedure 11, and a federal competency claim, because he was taking  
8 medication during his initial trial proceedings. (*Id.* at 2, 5). King did not raise any  
9 competency claims on direct appeal of his conviction. While King did note that he was  
10 “dizzy . . . confused and slightly incoherent” due to medication during the initial trial in  
11 his state post-conviction notice, he did so in the context of his ineffective assistance of  
12 counsel claim. (Doc. 13 at 88). He did not cite any legal authority related to competency  
13 in his state post-conviction relief petition, nor did he maintain that he was raising a  
14 competency claim at any time during the state post-conviction review process. And King  
15 even failed to raise competency as an issue in his Petition to this Court. (Doc. 1). Only in  
16 his reply brief did King raise competency as an issue. (Doc. 17 at 10). Like his  
17 ineffective assistance claim, King failed to present this competency claim to the  
18 appropriate state court. *Hiivala v. Wood*, 195 F.3d 1098, 1106 (9th Cir. 1999) (“A habeas  
19 petitioner must give the state courts the first opportunity to review any claim of federal  
20 constitutional error before seeking federal habeas review of that claim.”) (citing *Rose v.*  
21 *Lundy*, 455 U.S. 509, 518-19 (1982))

22 If King were to return to state court now to present his newfound competency  
23 claim, the claim would be precluded as waived and untimely under the Arizona Rules of  
24 Criminal Procedure. *See* Ariz. Rs. Crim. P. 32.2(a)(3) (“A defendant shall be precluded  
25 from relief under this rule based upon any ground . . . [t]hat has been waived at trial, on  
26 appeal, or in any previous collateral proceeding.”), 32.4(a) (providing that post-  
27 conviction relief motions under Rule 32 “must be filed within ninety days after the entry  
28 of judgment and sentence or within thirty days after the issuance of the order and

1 mandate in the direct appeal, whichever is the later”); *see also Beaty v. Stewart*, 303 F.3d  
2 975, 987 (9th Cir. 2002). Thus, as with his other claims, Petitioner’s competency claim is  
3 technically exhausted but procedurally defaulted. *See Coleman*, 501 U.S. at 732.

4 **CONCLUSION**

5 Because all of Petitioner’s claims are technically exhausted but procedurally  
6 defaulted, the Court will deny the petition for habeas relief. Therefore,

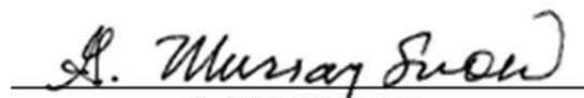
7 **IT IS HEREBY ORDERED** that Magistrate Judge Boyle’s R&R (Doc. 18) is  
8 adopted.

9 **IT IS FURTHER ORDERED** denying and dismissing with prejudice the  
10 Petitioner’s Petition for the Writ of Habeas Corpus (Doc. 1).

11 **IT IS FURTHER ORDERED** that the request for a Certificate of Appealability  
12 and leave to proceed *in forma pauperis* on appeal is **DENIED** because dismissal of the  
13 Petition is justified by a plain procedural bar and jurists of reason would not find the  
14 ruling debatable.

15 **IT IS FURTHER ORDERED** directing the Clerk of Court to terminate this  
16 action and enter judgment accordingly.

17 Dated this 5th day of October, 2018.

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20 G. Murray Snow  
21 Chief United States District Judge  
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