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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Scott Allen Patzke, Petitioner, v. Charles L. Ryan, Respondent.	No. CV-09-08220-PCT-NVW (ECV) **ORDER** **and** **CERTIFICATE OF APPEALABILITY AND IN FORMA PAUPERIS STATUS**

Pending before the Court is the Report and Recommendation ("R&R") of Magistrate Judge Edward C. Voss (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 9 (citing 28 U.S.C. § 636(b)). Petitioner's time to file objections was subsequently extended to November 18, 2010. (Doc. 17.) Petitioner filed objections on November 17, 2010. (Doc. 18.)

The Court has considered the objections and reviewed the R&R 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 R&R to which specific objections are made). The Court agrees with the Magistrate Judge's determinations, accepts the recommended decision within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner's

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objections. *See* 28 U.S.C. § 636(b)(1) (stating that the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate").

Insofar as the Magistrate Judge also ruled on any non-dispositive matters, error may not be assigned to any defect in those rulings to the extent that an aggrieved party did not file a timely objection. Fed. R. Civ. P. 72(a). The absence of a timely objection precludes later assignment of error in this court or in any higher court of the non-dispositive rulings of a magistrate judge. *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996); *Philipps v. GMC*, 289 F.3d 1117, 1120-21 (9th Cir. 2002).

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

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

Having considered the issuance of a Certificate of Appealability from the order denying Petitioner's Petition for a Writ of Habeas Corpus, the Court FINDS: Certificate of Appealability and leave to proceed *in forma pauperis* on appeal are **Denied**. Petitioner has not made a substantial showing of the denial of a constitutional right. *See* Rule 11(a), Rules Governing Section 2254 Cases in the United States District Courts.

DATED this 1st day of February, 2011.

Neil V. Wake
United States District Judge