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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Robert Lee Fisher,  
Petitioner,  
vs.  
Charles L. Ryan, et al.,  
Respondents.

No. CV-13-08267-PCT-PGR (ESW)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Willett notwithstanding that no party has filed any objections to the Report and Recommendation, the Court finds that the Magistrate Judge correctly determined that the petitioner's petition for a writ of habeas corpus, timely filed pursuant to 28 U.S.C. § 2254, should be denied.

The Court agrees with the Magistrate Judge that the petitioner procedurally defaulted on Grounds One, Two and Three due to his failure to fairly present them to the state courts, that he has not shown any sufficient cause to excuse the defaults, including any cause arising out the narrow exception of Martinez v. Ryan, 132 S.Ct. 1309 (2012), and that he has not argued a fundamental miscarriage of justice.

1 The Court further agrees with the Magistrate Judge that Ground Four, which  
2 alleges that the petitioner was tried while incompetent, is meritless inasmuch as the  
3 Arizona Court of Appeals reasonably determined the facts and reasonably applied  
4 Supreme Court precedent in affirming that the petitioner was competent to stand  
5 trial. Therefore,

6 IT IS ORDERED that the Magistrate Judge's Report and Recommendation  
7 (Doc. 15) is accepted and adopted by the Court.

8 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C. §  
9 2254 for a writ of Habeas Corpus by a Person in State Custody is denied and that  
10 this action is dismissed with prejudice.

11 IT IS FURTHER ORDERED that a certificate of appealability shall not issue  
12 and leave to appeal *in forma pauperis* is denied because the dismissal of Grounds  
13 One through Three of the petition is justified by a plain procedural bar and jurists of  
14 reason would not find the procedural ruling debatable, and because the petitioner  
15 has not made a substantial showing of the denial of a constitutional right as to  
16 Ground Four.

17 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment  
18 accordingly.

19 DATED this 28<sup>th</sup> day of June, 2015.

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22 Paul G. Rosenblatt  
23 United States District Judge  
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