



1 an exception to that bar. While Judge Metcalf found that Petitioner's Ground Two  
2 (Brady violation) and Ground Three (ineffective assistance of trial counsel re: discovery  
3 of witness impeachment evidence) were exhausted at the state court level and therefore  
4 were not procedurally barred, he recommended that this Court deny both grounds as  
5 lacking in merit.

6 What Petitioner filed as an Objection to the R&R (Doc. 28) did not constitute  
7 objections. For the most part, he simply stated that he objected to Magistrate Judge  
8 Metcalf's recommendations, without stating any reason why. *See, e.g.*, Objection at p. 2.  
9 Where Petitioner did purport to offer a reason for his objections, he simply stated, "see  
10 Supplemental Reply (Doc. 26)," a document Petitioner filed prior to the R&R and which  
11 Judge Metcalf had already considered when he drafted the R&R. The Objection  
12 identifies no error in the R&R's analysis and is of no help.

13 Where a Petitioner fails to object to an R&R, the Court is free to accept the R&R  
14 without further review. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.  
15 2003). Judge Metcalf so warned Petitioner in the R&R. (Doc. 27 at pp. 55-56). Where,  
16 as here, Petitioner's objections point to not a single flaw in the R&R's analysis, they have  
17 the same effect as would a complete failure to object. *Warling v. Ryan*, 2013 WL  
18 5276367 at \*2 (D. Ariz. Sept. 19, 2013). Though pursuant to the above law the Court is  
19 free to accept the R&R without more, it has nonetheless conducted a review of the  
20 Petition in this matter (Doc. 1), Respondents' Response thereto (Doc. 9) and  
21 Supplemental Answer (Doc. 25), Petitioner's Reply (Doc. 10) and Supplemental Reply  
22 (Doc. 26), with all exhibits, and the R&R (Doc. 27). Upon that review, the Court  
23 concludes that Judge Metcalf's recommendations are well taken and correctly apply the  
24 law throughout. The Court adopts the reasoning in the R&R in whole.

25 The R&R was thorough, exhaustive and even-handed, demonstrating in many  
26 places where Respondents' arguments were legally incorrect or their proffered evidence  
27 did not support the legal conclusions they urged. For example, in analyzing Ground Two  
28 of Petitioner's claim for habeas relief on the merits, Judge Metcalf concluded, over

1 Respondents' argument, that the state prosecutor suppressed information at trial that  
2 indeed impeached one of the investigating officers who was a witness at trial by showing  
3 he possessed or may possess a bias for being willing to break rules to obtain convictions.  
4 But Judge Metcalf also concluded that the Arizona Court of Appeals did not make an  
5 unreasonable determination when it found that no *Brady* violation had occurred because  
6 Petitioner could not show on the facts that suppression of the impeaching information  
7 caused prejudice. This conclusion was correct. The record before the Arizona Court of  
8 Appeals was replete, as it is before this Court on *habeas* review, with evidence that was  
9 completely independent of the potentially impeachable officer, and from which the jury  
10 could and did find Petitioner guilty. This included multiple items of drug trafficking  
11 indicia--methamphetamine, a scale, packaging material, and pay-owe ledgers including  
12 names and drug and dollar amounts seized as evidence, as well as Petitioner's recorded  
13 admission of guilt. The remainder of the R&R was consistently thorough and  
14 demonstrated consideration of all relevant law and components of the record on review.

15 Because the Court will dismiss with prejudice Ground Four as procedurally barred  
16 without cause to excuse the default, it need not consider Judge Metcalf's  
17 recommendation that Ground Four be denied on the merits, for lack of merit. However,  
18 were a ruling required on that issue, the Court would also conclude that Judge Metcalf's  
19 analysis of Ground Four on the merits was correct, as Petitioner failed to demonstrate  
20 ineffective assistance of counsel regarding the plea offer.

21 For the reasons set forth in the R&R,

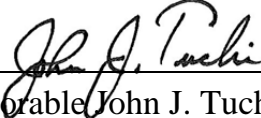
22 **IT IS ORDERED:**

- 23 1) adopting in whole the Report and Recommendation submitted by Judge  
24 Metcalf in this matter (Doc. 27);  
25 2) dismissing with prejudice Grounds One and Four of the Petition;  
26 3) denying Grounds Two and Three of the Petition for lack of merit;  
27 2) denying the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.  
28 Section 2254 (Doc. 1) and dismissing the matter; and

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3) denying a certificate of appealability and leave to proceed *in forma pauperis* on appeal, because the Court finds that dismissal of the Petition is justified by a plain procedural bar, and reasonable jurists would not find the ruling debatable.

Dated this 28<sup>th</sup> day of January, 2016.

  
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Honorable John J. Tuchi  
United States District Judge