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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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David Michael Collier,

No. CV-14-8227-PCT-DJH

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Petitioner,

ORDER

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v.

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Lyle Broadhead, et al.,

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Respondents.

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This matter is before the Court on Petitioner's Petition for Writ of Habeas Corpus (the "Petition") pursuant to 28 U.S.C. § 2254 (Doc. 1) filed on November 24, 2014, and the Report and Recommendation ("R&R") (Doc. 17) issued by United States Magistrate Judge Eileen S. Willett on February 24, 2016. Pursuant to a plea agreement, Petitioner pled guilty on October 15, 2013 to one count of Aggravated Assault Causing Physical Injury Per Domestic Violence, a class 6 felony under Arizona law, and one count of Resisting Arrest, Passive Resistance, a class 1 misdemeanor. (Doc. 17 at 1-2). Petitioner was sentenced in February 2014 to a two-year term of supervised probation. (Doc. 17 at 2). A few months later, the trial court determined Petitioner violated the terms of his probation and revoked it. (*Id.*). The trial court then sentenced Petitioner to one year of incarceration for the assault conviction and 66 days for the resisting arrest conviction. (*Id.*). Petitioner did not file a petition for post-conviction relief or a direct appeal challenging the sentence. (Doc. 17 at 2).

1 Petitioner raised four grounds for relief in the Petition, including that he was
2 denied counsel in violation of his due process and equal protection rights, that the trial
3 court lacked jurisdiction, that he was denied access to a law library and the courts, and
4 that other due process and equal protection rights were violated. (Doc. 17 at 6). After
5 consideration and analysis of the issues, Judge Willett concluded that Petitioner, by
6 failing to file a petition for post-conviction in State court, failed to exhaust his state court
7 remedies and that he is now barred from doing so. (*Id.* at 6-10). Accordingly, Judge
8 Willett recommends that the Petition be denied and dismissed with prejudice. (*Id.* at 10).

9 Judge Willett advised the parties that they had fourteen days to file objections and
10 that the failure to file timely objections "may result in the acceptance of the Report and
11 Recommendation by the District Court without further review." (Doc. 17 at 11) (citing
12 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)). The parties have not
13 filed objections and the time to do so has expired. Absent any objections, the Court is not
14 required to review the findings and recommendations in the R&R. *See Thomas v. Arn*,
15 474 U.S. 140, 149 (1989) (The relevant provision of the Federal Magistrates Act, 28
16 U.S.C. § 636(b)(1)(C), "does not on its face require any review at all . . . of any issue that
17 is not the subject of an objection."); *Reyna-Tapia*, 328 F.3d at 1121 (same); Fed.R.Civ.P.
18 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's
19 disposition that has been properly objected to.").

20 Nonetheless, the Court has reviewed the R&R and agrees with its findings and
21 recommendations. The Court will, therefore, accept the R&R and deny the Petition. *See*
22 28 U.S.C. § 636(b)(1)(C) ("A judge of the court may accept, reject, or modify, in whole
23 or in part, the findings or recommendations made by the magistrate judge.");
24 Fed.R.Civ.P. 72(b)(3) (same).

25 Accordingly,

26 **IT IS ORDERED** that Magistrate Judge Willett's R&R (Doc. 17) is **accepted** and
27 **adopted** as the order of this Court.

28 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus

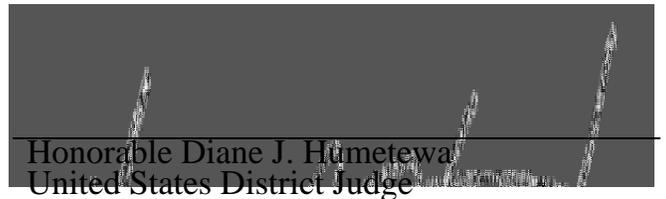
1 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **denied** and **dismissed with prejudice**.

2 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
3 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*
4 on appeal are **denied** because dismissal of the Petition is justified by a plain procedural
5 bar and jurists of reason would not find the procedural ruling debatable.

6 **IT IS FURTHER ORDERED** that the Clerk of Court shall terminate this action
7 and enter judgment accordingly.

8 **Dated** this 18th day of April, 2016.

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Honorable Diane J. Humetewa
United States District Judge