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

Jeffrey Paul Costa,
Petitioner,
v.
Charles L Ryan,
Respondent.

No. CV-17-08076-PCT-DLR
ORDER

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Bridge S. Bade (Doc. 11) regarding Petitioner Jeffrey Costa’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. (Doc. 11 at 13-14 (citing U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72).) Petitioner filed objections on January 22, 2018 (Doc. 12), and Respondent filed their response to the objections on January 23, 2018 (Doc. 13).

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 Report and Recommendation to which specific objections are made). The Court agrees with the Magistrate Judge’s determinations that Petitioner timely filed his petition for post-conviction relief (“PCR”), but that relief

1 should be denied because Petitioner's claims are procedurally barred from federal habeas
2 review and Petitioner has not established a basis to overcome the procedural bar.

3 Moreover, Petitioner raised for the first time in his objection to the R&R a
4 *Martinez v. Ryan*, 566 U.S. 1 (2012), ineffective assistance of counsel argument. The
5 Court will not consider the argument raised for the first time in an objection, but even if it
6 were to consider the argument, having reviewed the record, the Court finds there is no
7 factual or legal basis to support a claim of ineffective assistance of PCR counsel.

8 The Court accepts the recommended decision within the meaning of Rule 72(b),
9 Fed. R. Civ. P., and overrules Petitioner's objections. *See* 28 U.S.C. § 636(b)(1) (stating
10 that the district court "may accept, reject, or modify, in whole or in part, the findings or
11 recommendations made by the magistrate").

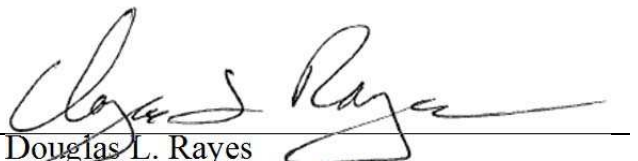
12 **IT IS ORDERED** that R&R of the Magistrate Judge (Doc. 11) is **ACCEPTED**.

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

16 Having considered the issuance of a Certificate of Appealability from the order
17 denying Petitioner's Petition for a Writ of Habeas Corpus and leave to proceed in forma
18 pauperis on appeal are **DENIED** because dismissal of the Petition is justified by a plain
19 procedural bar.

20 Dated this 2nd day of March, 2018.

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Douglas L. Rayes
United States District Judge