

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Rupert Ray Dixon,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

) No. CV 09-162-TUC-JMR

) **ORDER ADOPTING MAGISTRATE**
) **JUDGE’S R&R AND DENYING**
) **PETITION**

This case involves a Petition Under 28 U.S.C. § 2254 For a Writ of Habeas Corpus filed by Petitioner Rupert Ray Dixon on March 20, 2009 (Doc. 1). On September 23, 2009, after a thorough and well-documented analysis, Magistrate Judge Jennifer C. Guerin issued a Report and Recommendation (“R&R”) to this Court, recommending that the Petition for Writ of Habeas Corpus be denied. On September 29, 2009 Petitioner filed his objections to the R&R.

After an independent review of the record and a de novo review of the portions of the R&R to which Petitioner has objected, the Court adopts the Magistrate Judge’s R&R in whole. In his objections to the R&R, Petitioner does not raise any new issues of fact or law but merely reiterates the arguments and claims he has already made in his Petition, his Reply/Traverse to the Petition, and the briefs filed in his direct appeal and post-conviction relief proceedings in state court. All of Petitioner’s arguments have been adequately

1 addressed by the Magistrate Judge in her R&R. Petitioner's claims are without merit and his
2 Petition must be denied.

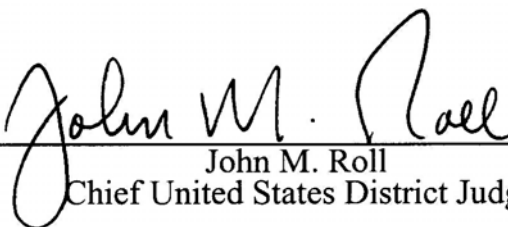
3 In addition, Petitioner has filed numerous requests for an evidentiary hearing (see
4 Docs. 13, 15, 16, 19, 20). As the Magistrate Judge notes in her R&R, Petitioner is entitled
5 to an evidentiary hearing on a claim only if he alleges "facts that, if proven, would entitle him
6 to relief." *Turner v. Calderon*, 281 F.3d 851, 890 (9th Cir. 2002) (quoting *Tapia v. Roe*, 189
7 F.3d 1052, 1056 (9th Cir. 1999)). In other words, Petitioner "must allege a colorable
8 constitutional claim." *Id.* Magistrate Judge Guerin is correct that here, Petitioner challenges
9 the legal conclusions of the state court without alleging any facts which, if proven, would
10 entitle him to relief. Therefore, Petitioner is not entitled to an evidentiary hearing.

11 Accordingly,

12 **IT IS HEREBY ORDERED** that the **REPORT AND RECOMMENDATION** of
13 Magistrate Judge Guerin (Doc. 18) is **ADOPTED** in whole. The Petition (Doc. 1) is
14 **DENIED** and this case is **DISMISSED**. The Clerk of Court is directed to close this case and
15 enter judgment accordingly.

16 **IT IS FURTHER ORDERED** that all pending motions in this case are **denied** in
17 light of this Order.

18 DATED this 13th day of September, 2010.

19
20
21 
22 _____
23 John M. Roll
24 Chief United States District Judge
25
26
27
28