



1 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). Rather, this Court is not required to conduct “any  
2 review at all . . . of any issue that is not the subject of an objection.” *Id.* at 149.

3       Indeed, the Ninth Circuit has recognized that a district court is not required to review  
4 a magistrate judge's report and recommendation where no objections have been filed. *See*  
5 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir.2003) (disregarding the standard of  
6 review employed by the district court when reviewing a report and recommendation to which  
7 no objections were made); *see also Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226 (D.Ariz.  
8 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that district  
9 courts are not required to review “any issue that is not the subject of an objection.”). In other  
10 words, if there is no objection to a magistrate judge's recommendation, then this Court may  
11 accept the recommendation without review. *See e.g., Johnstone*, 263 F.Supp.2d at 1226  
12 (accepting, without review, a magistrate judge's recommendation to which no objection was  
13 filed).

14       In this case, Ramon has not filed an objection to the magistrate judge's Report and  
15 Recommendation. Although Ramon has not filed an objection, the Court has reviewed the  
16 Report and Recommendation and finds that it is well-taken. The Court will accept the Report  
17 and Recommendation and dismiss the Petition.

18  
19 *Certificate of Appealability (“COA”)*

20       Rule 11(a), Rules Governing Section 2254 Cases, requires that in habeas cases the  
21 “district court must issue or deny a certificate of appealability when it enters a final order  
22 adverse to the applicant.” Such certificates are required in cases concerning detention arising  
23 “out of process issued by a State court”, or in a proceeding under 28 U.S.C. § 2255 attacking  
24 a federal criminal judgment or sentence. 28 U.S.C. § 2253(c)(1). Here, the Petition is  
25 brought pursuant to 28 U.S.C. § 2254, and challenges detention pursuant to a State court  
26 judgment. This Court must determine, therefore, if a COA shall issue.

27       The standard for issuing a COA is whether the applicant has “made a substantial  
28

1 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district  
2 court has rejected the constitutional claims on the merits, the showing required to satisfy §  
3 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would  
4 find the district court's assessment of the constitutional claims debatable or wrong.” *Slack*  
5 *v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). “When the district  
6 court denies a habeas petition on procedural grounds without reaching the prisoner's  
7 underlying constitutional claim, a COA should issue when the prisoner shows, at least, that  
8 jurists of reason would find it debatable whether the petition states a valid claim of the denial  
9 of a constitutional right and that jurists of reason would find it debatable whether the district  
10 court was correct in its procedural ruling.” *Id.*; *see also Robbins v. Carey*, 481 F.3d  
11 1143,1146-47 (9th Cir. 2007) (failure to object to magistrate judge’s conclusions does not  
12 automatically waive appellate challenge) In the certificate, the Court must indicate which  
13 specific issues satisfy the showing. *See* 28 U.S.C. § 2253(c)(3).

14 The magistrate judge determined, and this Court accepted, that (1) the claims set forth  
15 in Ground I regarding his sentence being in violation of the Arizona Revised Statutes are not  
16 amenable to federal review and that Ramon’s reference to the Sixth and Fourteenth  
17 Amendments of the United States Constitution does not convert the alleged violations of state  
18 law into federal claims, (2) Ramon’s claim that the sentencing judge failed to give a reason  
19 for imposing consecutive sentences was not exhausted, was procedurally defaulted, (3)  
20 Ramon’s claims that the sentencing judge failed to give specific reasons for imposing a  
21 mitigated sentence consecutive to a presumptive sentence and failed to sentence Ramon  
22 concurrently on two counts which resulted from the same indictment are foreclosed from  
23 federal review by the state’s independent and adequate procedural bar, and (4) Ramon failed  
24 to establish cause and prejudice or a fundamental miscarriage of justice as to Ground I. The  
25 magistrate judge also determined, and this Court accepted, that Ramon’s claim in Ground II  
26 of the Petition that the trial court abused its discretion by failing to correct or modify his  
27 sentences to run concurrently fails to present a cognizable claim for federal habeas review.

1 was not exhausted, and is procedurally defaulted; further, that Ramon has failed to show  
2 cause and prejudice or a fundamental miscarriage of justice as to Ground II. The magistrate  
3 judge also concluded, and this Court accepted, that Ramon has not exhausted his claim that  
4 post-conviction counsel was ineffective, that this claim is procedurally defaulted, and that  
5 Ramon has failed to show cause and prejudice or a miscarriage of justice. Lastly, the  
6 magistrate judge concluded, and this Court accepted, that Ramon has not exhausted his claim  
7 that the state appellate court chose not to consider claims presented in the petition for review,  
8 that this claim is procedurally defaulted, and that Ramon has failed to establish cause and  
9 prejudice or a miscarriage of justice as to Ground IV.

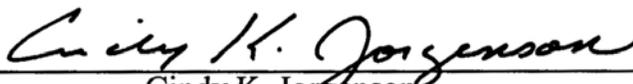
10 The Court finds that jurists of reason would not find it debatable whether the Petition  
11 stated a valid claim of the denial of a constitutional right and the Court finds that jurists of  
12 reason would not find it debatable whether the district court was correct in its procedural  
13 ruling. A COA shall not issue as to Ramon's claims.

14 Any further request for a COA must be addressed to the Court of Appeals. *See Fed.*  
15 *R.App. P. 22(b); Ninth Circuit R. 22-1.*

16 Accordingly, IT IS ORDERED:

- 17 1. The Report and Recommendation [Doc. # 19] is ADOPTED.
- 18 2. Ramon's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a  
19 Person in State Custody is DISMISSED WITH PREJUDICE;
- 20 3. The Clerk of the Court shall enter judgment and shall then close its file in this  
21 matter, and;
- 22 4. A Certificate of Appealability shall not issue in this case.

23 DATED this 7th day of September, 2010.

24  
25  
26   
27 Cindy K. Jorgenson  
28 United States District Judge