

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

Rafael M. Cardenas,	)	No. CV 10-43-TUC-FRZ (JR)
Petitioner,	)	<b>ORDER</b>
vs.	)	
Charles Ryan, et al.,	)	
Respondents.	)	

---

Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Rateau<sup>1</sup> that recommends denying Petitioner’s habeas petition filed pursuant to 28 U.S.C. §2254. A review of the record reflects that the parties have not filed any objections to the Report and Recommendation and the time to file objections has expired. As such, the Court will not consider any objections or new evidence.

The Court has reviewed the record and concludes that Magistrate Judge Rateau’s recommendations are not clearly erroneous and they are adopted. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

Before Petitioner can appeal this Court's judgment, a certificate of appealability must issue. *See* 28 U.S.C. §2253(c) and Fed. R. App. P. 22(b)(1). Federal Rule of Appellate Procedure 22(b) requires the district court that rendered a judgment denying the petition

---

<sup>1</sup>Magistrate Judge Marshall recently changed her last name to Rateau.

1 made pursuant to 28 U.S.C. §2254 to "either issue a certificate of appealability or state why  
2 a certificate should not issue." Additionally, 28 U.S.C. §2253(c)(2) provides that a certificate  
3 may issue "only if the applicant has made a substantial showing of the denial of a  
4 constitutional right." In the certificate, the court must indicate which specific issues satisfy  
5 this showing. See 28 U.S.C. §2253(c)(3). A substantial showing is made when the  
6 resolution of an issue of appeal is debatable among reasonable jurists, if courts could resolve  
7 the issues differently, or if the issue deserves further proceedings. See *Slack v. McDaniel*,  
8 529 U.S. 473, 484-85 (2000). Upon review of the record in light of the standards for  
9 granting a certificate of appealability, the Court concludes that a certificate shall not issue  
10 as the resolution of the petition is not debatable among reasonable jurists and does not  
11 deserve further proceedings.

12 Accordingly, IT IS HEREBY ORDERED as follows:

- 13 (1) The Report and Recommendation (Doc. 20) is accepted and adopted.
- 14 (2) Petitioner's §2254 habeas petition is denied and this case is dismissed with prejudice.
- 15 (3) A Certificate of Appealability is denied and shall not issue.
- 16 (4) The Clerk of the Court shall enter judgment accordingly and close the file in this matter.

17 DATED this 4<sup>th</sup> day of September, 2012.

18  
19   
20 Frank R. Zapata  
21 Senior United States District Judge  
22  
23  
24  
25  
26  
27  
28