

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

James Van Gilpin,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

No. CV-10-700-TUC-JGZ (BGM)

ORDER

Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Bruce G. Macdonald that recommends denying Petitioner's habeas petition filed pursuant to 28 U.S.C. §2254. (Doc. 43.) As thoroughly explained by Magistrate Judge Macdonald, Petitioner is not entitled to relief as his petition is without merit. As Petitioner's objections do not undermine the analysis and proper conclusion reached by Magistrate Judge Macdonald, Petitioner's objections are rejected and the Report and Recommendation is adopted.

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 made pursuant to 28 U.S.C. §2254 to "either issue a certificate of appealability or state why a certificate should not issue." Additionally, 28 U.S.C. §2253(c)(2) provides that a certificate may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." In the certificate, the court must indicate which specific issues satisfy this showing. *See* 28 U.S.C. §2253(c)(3). A

1 substantial showing is made when the resolution of an issue of appeal is debatable among
2 reasonable jurists, if courts could resolve the issues differently, or if the issue deserves
3 further proceedings. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Upon review
4 of the record in light of the standards for granting a certificate of appealability, the Court
5 concludes that a certificate shall not issue as the resolution of the petition is not debatable
6 among reasonable jurists and does not deserve further proceedings.

7 Accordingly, IT IS HEREBY ORDERED as follows:

8 (1) The Report and Recommendation (Doc. 43) is accepted and adopted;

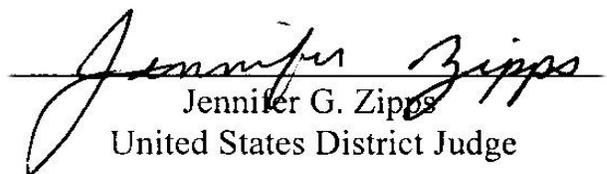
9 (2) Petitioner's §2254 Amended Petition (Doc. 5) is denied and this case is dismissed
10 with prejudice;

11 (3) All other pending Motions (Docs. 34, 37, 38, 39, 40, 41 and 42) are DENIED AS
12 MOOT;

13 (3) A Certificate of Appealability is denied and shall not issue; and

14 (4) The Clerk of the Court shall enter judgment accordingly and close the file in this
15 matter.

16 Dated this 16th day of January, 2013.

17
18
19 
20 Jennifer G. Zipp
21 United States District Judge
22
23
24
25
26
27
28