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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MICHAEL JOSEPH WIEBER ,

Petitioner,

vs.

CHARLES L. RYAN,

Respondent.

No. CIV 11-064-TUC-CKJ (BPV)

ORDER

On June 28, 2011, Magistrate Judge Bernardo P. Velasco issued a Report and Recommendation [Doc. # 12] in which he recommended that the Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody filed by Michael Joseph Wieber (“Wieber”) on January 20, 2011, be dismissed. The magistrate judge advised the parties that written objections to the Report and Recommendation were to be filed within fourteen days of service of a copy of the Report and Recommendation pursuant to 28 U.S.C. § 636(b). No objections have been filed within the time provided.

Report and Recommendation

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Further, under 28 U.S.C. § 636(b)(1), if a party makes a timely objection to a magistrate judge's recommendation, then this Court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” The statute does not “require [] some lesser review by [this Court] when no objections are filed.” *Thomas v. Arn*, 474 U.S. 140, 149-50,

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, Wieber has not filed an objection to the magistrate judge's Report and
15 Recommendation. Although Wieber has not filed an objection, the Court has independently
16 reviewed the Report and Recommendation and adopts the recommended findings and
17 conclusions. The Court will accept the Report and Recommendation and dismiss the
18 Petition.


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

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

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4. A Certificate of Appealability shall not issue in this case.

DATED this 6th day of September, 2011.



Cindy K. Jorgenson
United States District Judge