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

Ricky Lamar Simmons,
Petitioner,
v.
Arizona, State of, et al.,
Respondents.

No. CV-12-00435-TUC-JGZ

ORDER

Pending before the Court is a Report and Recommendation issued by United States Magistrate Eric J. Markovich that recommends denying Petitioner's habeas petition filed pursuant to 28 U.S.C. § 2254. (Doc. 41.) As thoroughly explained by Magistrate Judge Markovich, Petitioner is not entitled to relief as the claims raised in his petition are not exhausted or are without merit. As Petitioner's objections do not undermine the analysis and proper conclusion reached by Magistrate Judge Markovich, Petitioner's objections are rejected and the Report and Recommendation is adopted.

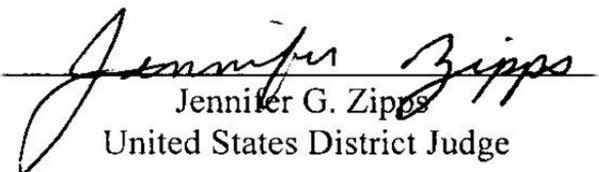
Before Petitioner can appeal this Court's judgment, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b)(1). Federal Rule of Appellate Procedure 22(b) requires the district court that rendered a judgment denying the petition made pursuant to 28 U.S.C. § 2254 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. 41) is accepted and adopted;
- 9 2. Petitioner's § 2254 Petition (Doc. 1) is denied and this case is dismissed with
10 prejudice;
- 11 3. A Certificate of Appealability is denied and shall not issue; and
- 12 4. The Clerk of the Court shall enter judgment accordingly and close the file in this
13 matter.

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15 Dated this 26th day of March, 2015.

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19 Jennifer G. Zipp
20 United States District Judge
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