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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Amos Beverett,	)	
	)	CV-13-1303-TUC-DCB
Petitioner,	)	
v.	)	
	)	
Charles L. Ryan, et al.,	)	<b>ORDER</b>
	)	
Respondents.	)	
	)	
_____	)	

This matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b) and the local rules of practice of this Court for a Report and Recommendation (R&R) on the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Before the Court is the Magistrate Judge’s Report and Recommendation (Doc. 23), which recommends that the Petition be denied and dismissed. The Petitioner filed Objections to the Report and Recommendation. (Doc. 26.) A Reply (Doc. 32) was filed June 22, 2015.

**SUMMARY**

On September 29, 2010, Petitioner was convicted in Pima County Superior Court, case #CR 2009-1782-001, of three counts of sale and/or transfer of a narcotic drug, and was sentenced to concurrent, presumptive prison terms of 15.75 years. On October 18, 2011, Petitioner appealed his convictions and sentences to the Arizona Court of Appeals. See *State v.*

1 *Beverett*, No. 2 CA-CR 2010-0397, 2011 WL 6226138 (Ariz. Ct. App. Dec. 14,  
2 2011). On December 14, 2011, the Arizona Court of Appeals affirmed the  
3 convictions and sentences. On March 7, 2012, Petitioner filed a Rule 32  
4 Petition for Post-Conviction Relief in Pima County Superior Court, which  
5 was denied on May 24, 2012. (Doc. 1 at 4). On October 3, 2012, Petitioner  
6 sought review of the denial of his Rule 32 Petition for Post-Conviction  
7 Relief in the Arizona Court of Appeals. *State v. Beverett*, No. 2 CA-CR  
8 2012-0419-PR, 2013 WL 653698 (Ariz. Ct. App. Feb. 21, 2013). The Arizona  
9 Court of Appeals granted review of the Rule 32 petition, but denied  
10 relief. *Id.* On May 7, 2013, Petitioner filed a special action in Pima  
11 County Superior Court. (Doc. 1 at 5). In his Petition, Petitioner states  
12 that, as of October 2, 2013, the Pima County Superior Court had not  
13 issued a decision on the special action. (*Id.* at 5). In his Petition,  
14 Petitioner names Charles L. Ryan as Respondent and the Arizona Attorney  
15 General as an Additional Respondent. Petitioner raises seven grounds for  
16 relief: (1) that defense counsel was ineffective in failing to object to  
17 testimonial hearsay at trial;(2) that defense counsel was ineffective in  
18 failing to file a motion to suppress statements made by an anonymous  
19 informant; (3) that defense counsel was ineffective in failing to file  
20 a motion to suppress evidence; (4) that defense counsel was ineffective  
21 in failing to tell Petitioner that the case involved an anonymous  
22 informant; (5) that testimonial hearsay was admitted at trial in  
23 violation of Petitioner's rights to due process, confrontation, and a  
24 fair trial under the United States and Arizona Constitutions; (6) that  
25 testimonial hearsay was admitted at trial in violation of Petitioner's  
26 rights to due process, confrontation, and a fair trial under the United  
27 States and Arizona Constitutions; and (7) that the Indictment was

1 defective, resulting in violations of Petitioner's rights to due process  
2 and a fair trial under the United States and Arizona Constitutions.

3 **STANDARD OF REVIEW**

4 When objection is made to the findings and recommendation of a  
5 magistrate judge, the district court must conduct a de novo review.  
6 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

7 **OBJECTIONS**

8 **A. Procedurally Defaulted Claims: Grounds Four through Seven**

9 Petitioner asserts four claims of ineffective assistance of counsel  
10 (IAC) (Grounds One through Four), two claims that testimonial hearsay was  
11 admitted at trial in violation of Petitioner's rights to due process,  
12 confrontation, and a fair trial under the United States and Arizona  
13 Constitutions (Grounds Five and Six) and one claim that the Indictment  
14 was defective, resulting in violations of Petitioner's rights to due  
15 process and a fair trial under the United States Constitution (Ground  
16 Seven). The R&R found that Grounds One through Three of the Petition are  
17 exhausted and went on to address them on the merits, and Grounds Four  
18 through Seven were procedurally defaulted.

19 Petitioner's objections contain no new information that suggests  
20 that the conclusions in the R&R are incorrect. The Court agreed with the  
21 R&R's finding that the special action filed was not a successive Rule 32,  
22 and thus the claim should not be precluded is not persuasive.

23 Accordingly, this Court will adopt the R&R with reference to  
24 Grounds Four through Seven as procedurally defaulted and will dismiss  
25 them as such.



1 addressing only the issue of prejudice. (Doc. 23, at 19-20.)<sup>1</sup> This Court  
2 agrees.

3 Petitioner's Objections do not highlight any new or pertinent  
4 law or facts that were left unconsidered or unresolved by the R&R, as  
5 reinforced by the Defendant's responses.

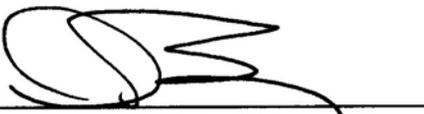
6 **CONCLUSION**

7 Accordingly, after conducting a de novo review of the record,

8 **IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation  
9 (Doc. 23) in its entirety. The Objections raised by the Petitioner are  
10 **OVERRULED**. The motion to strike (Doc. 34) is **DENIED**.

11 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus  
12 (Doc. 1) is **DENIED** and this action is **DISMISSED** with prejudice. Final  
13 Judgment to enter separately by the Clerk's Office. A Certificate of  
14 Appealability is likewise **DENIED**. This action is closed.

15 DATED this 28<sup>th</sup> day of October, 2015.

16   
17 **David C. Bury**  
18 **United States District Judge**

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19  
20 <sup>1</sup>Petitioner also asserts in his objections that his trial attorney  
21 had a "duty to call this anonymous informant to testify" and that his  
22 failure to do so was "deficient" and "clearly prejudiced" him. (Doc. 26,  
23 at 5.) To the extent Petitioner is attempting to raise a claim that his  
24 trial counsel was ineffective in failing to call the informant to  
25 testify, he made no such claim in his habeas petition. (Doc. 1.) Although  
26 this Court has discretion to consider new claims raised for the first  
27 time in objections to a R&R, this Court will decline to do so. *See Brown*  
28 *v. Roe*, 279 F.3d 742, 744-45 (9th Cir. 2002). First, Petitioner gives no  
reason for his failure to present this claim in his petition. Second, as  
explained below, this claim appears to be unexhausted, and therefore  
could not provide a basis for habeas relief. *See* 28 U.S.C. §  
2254(b)(1)(A) (a federal court will not grant habeas relief to a  
petitioner held in state custody unless he or she has exhausted the  
available state remedies).