

1

2

3

4

5

6

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

7

8

9

Aage Nost,

No. CV-13-01614-TUC-JGZ

10

Petitioner,

ORDER

11

v.

12

Lyle Broadhead, et al.,

13

Respondents.

14

15

Pending before the Court is a Report and Recommendation issued by United States Magistrate Jacqueline Rateau that recommends denying Petitioner's Amended Habeas Petition filed pursuant to 28 U.S.C. §2254. (Doc. 36.) As thoroughly explained by Magistrate Judge Rateau, Petitioner's petition is untimely. As Petitioner's objections (Doc. 37) do not undermine the analysis and proper conclusion reached by Magistrate Judge Rateau, Petitioner's objections are rejected and the Report and Recommendation is adopted.

16

17

18

19

20

21

22

Before Petitioner can appeal this Court's judgment, a certificate of appealability must issue. *See* Fed. R. App. P. 22(b)(1) (the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)). 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 substantial showing is made when the resolution of an

23

24

25

26

27

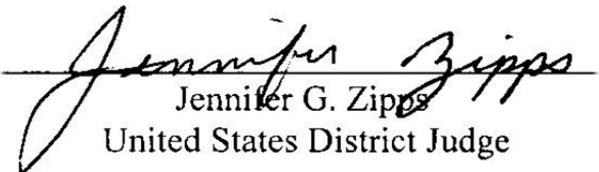
28

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

7 Accordingly, IT IS HEREBY ORDERED as follows:

- 8 1. The Report and Recommendation (Doc. 36) is accepted and adopted;
- 9 2. Petitioner's Amended §2254 Petition (Doc. 10) is denied and this case is
10 dismissed with 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.

14 Dated this 16th day of September, 2015.

15
16
17 
18 Jennifer G. Zipp
19 United States District Judge
20
21
22
23
24
25
26
27
28