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

David D Green,

No. CV-17-00570-TUC-DCB

**ORDER** 

RL Rhodes,

Respondent.

Petitioner,

This matter was referred to Magistrate Judge Eric J. Markovich, pursuant to Rules of Practice for the United States District Court, District of Arizona (Local Rules), Rule (Civil) 72.1(a). He issued a Report and Recommendation (R&R (Doc. 18)) on December 10, 2019. He recommends the Petition be dismissed because the Petitioner, who was incarcerated at the time he filed for relief under 28 U.S.C. § 2241, has now been released. "Because Petitioner has already been released from custody, the Petition [challenging the calculation of his projected release date] is now moot and dismissal is appropriate. (R&R (Doc. 18) at 1-2 (citing *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)).

The duties of the district court, when reviewing a R&R of a Magistrate Judge, are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Fed.R.Civ.P. 72(b), 28 U.S.C. § 636(b)(1). When the parties object to a R&R, "[a] judge of the [district] court shall make a de novo determination of those portions of the [R&R] to which objection is made."

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Thomas v. Arn, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)). When no objections are filed, the district court does not need to review the R&R de novo. Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); United States v. Reyna-Tapia, 328 F.3d 1114, 1121-22 (9th Cir.2003) (en banc).

The parties were sent copies of the R&R and instructed they had 14 days to file written objections. 28 U.S.C. § 636(b), see also, Federal Rule of Criminal Procedure 72 (party objecting to the recommended disposition has fourteen (14) days to file specific, written objections). To date, no objections have been filed.

While there are no objections and review has, therefore, been waived, the Court nevertheless reviews at a minimum, de novo, the Magistrate Judge's conclusions of law. Robbins v. Carey, 481 F.3d 1143, 1147 (9th Cir. 2007) (citing Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998) (conclusions of law by a magistrate judge reviewed de novo); Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991) (failure to object standing alone will not ordinarily waive question of law, but is a factor in considering the propriety of finding waiver)). The Court finds the R&R to be thorough and well-reasoned, without any clear error in law or fact. See United States v. Remsing, 874 F.2d 614, 617-618 (9th Cir. 1989). The Court accepts and adopts the R&R as the opinion of the Court, pursuant to 28 U.S.C. § 636(b)(1). For the reasons stated in the R&R, the Court dismisses the Petition.

## Accordingly,

IT IS ORDERED that the Report and Recommendation (Doc. 18) is adopted as the opinion of the Court.

**IT IS FURTHER ORDERED** dismissing the Petition (Doc. 1).

IT IS FURTHER ORDERED that the Clerk of the Court shall enter Judgment accordingly.

IT IS FURTHER ORDERED that in the event the Plaintiff, proceeding here in forma pauperis under 28 U.S.C. § 2241, files an appeal, the Court finds the appeal is not taken in good faith because an appeal would be frivolous as there is no substantial argument

to be made contrary to this Court's determination recorded here. 28 U.S.C. 1915(a)(3) and FRAP 24(a); *Cruz v. Hauck*, 404 U.S. 59, 62 (1971).

Dated this 24th day of February, 2020.

Honorable David C. Bury United States District Judge