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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Richard J. Washington,)	No. CV-05-01693-PHX-ROS
Petitioner,)	ORDER
vs.)	
G. Fizer et al.,)	
Respondents.)	

On September 19, 2008, Magistrate Judge Hector C. Estrada filed a Report and Recommendation (Doc. 18) recommending the denial of Petitioner’s application for Writ of Habeas Corpus (Doc. 1). On September 29, 2008, Petitioner responded (Doc. 23). For the following reasons, the Court will adopt the Report and Recommendation.

BACKGROUND

On July 20, 1990, Petitioner was convicted of multiple counts of armed robbery (Doc. 16 Ex. D). The Court of Appeals affirmed Petitioner’s conviction and sentence and, on January 15, 1993, the Arizona Supreme Court denied review (Doc. 16 Ex. I, J). In 1994, 1997, and 2003, Petitioner sought post-conviction relief in state court and all petitions were dismissed

1 (Doc. 16 Ex. P, R, BB).¹ On June 6, 2005, Petitioner filed a petition for writ of habeas
2 corpus in this Court (Doc. 1).

3 4 **STANDARD**

5 A “district judge may refer dispositive pretrial motions and petitions for writ of habeas
6 corpus to a magistrate, who shall conduct appropriate proceedings and recommend
7 dispositions.” Thomas v. Arn, 474 U.S. 140, 141 (1985); see 28 U.S.C. § 636(b)(1)(B);
8 Estate of Connors v. O'Connor, 6 F.3d 656, 658 (9th Cir. 1993). Any party “may serve and
9 file written objections” to the Magistrate’s report and recommendation. 28 U.S.C. §
10 636(b)(1). “A judge of the court shall make a *de novo* determination of those portions of the
11 report or specified findings or recommendations to which objection is made.” Id. A district
12 judge “may accept, reject, or modify, in whole or in part, the findings or recommendations
13 made by the magistrate.” 28 U.S.C. § 636(b)(1).

14 **DISCUSSION**

15 Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), an inmate
16 in state custody cannot file an application for writ of habeas corpus more than one year from
17 “the date on which the judgment became final by the conclusion of direct review or the
18 expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). Inmates with
19 convictions occurring before AEDPA’s effective date have a one-year grace period to file
20 a habeas petition, a period which expired on April 23, 1997. See Patterson v. Stewart, 251
21 F.3d 1243, 1245 (9th Cir. 2001). Petitioner’s conviction became final in 1993 when the
22 Arizona Supreme Court denied his appeal and concluded the direct review process. Thus,
23 Petitioner’s final year for filing a habeas petition ran from AEDPA’s effective date until
24 April 23, 1997. While outstanding petitions for state post-conviction relief will stay the
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¹Petitioner filed his second petition for post-conviction relief on September 17, 1997 (Doc.
16 Ex. Q).

1 AEDPA one-year limitation, Petitioner filed the first petition before AEDPA was enacted and
2 filed the latter petitions after the AEDPA limitation expired.

3 Petitioner claims the AEDPA one-year limitation period did not commence until he
4 received his state court case file because his petition is based on facts in the file and he was
5 unable to obtain the file at an earlier date. See 28 U.S.C. § 2244(d)(1)(D). The Court rejects
6 this claim. Section 2244(d)(1)(D) resets the habeas clock if a petitioner could not have
7 discovered the factual predicate of his claim earlier “through the exercise of due diligence.”
8 Id. There is nothing in the record that supports Petitioner’s claim of diligence when it took
9 a decade to obtain his state court case file. Concomitantly, equitable tolling is not applicable.
10 See Raspberry v. Garcia, 448 F.3d 1150, 1153-54 (9th Cir. 2006).


11 Petitioner’s argument concerning the Arizona Court of Appeal’s interpretation of AEDPA
12 is irrelevant. Whatever a state court may have said about Petitioner’s case, federal courts are
13 the ultimate arbiters of federal law. Petitioner’s Motions to Amend his habeas petition and
14 Motion For Evidentiary Hearing are moot, since neither his proposed amendments nor any
15 evidence he suggests would alter his failure to meet the AEDPA one-year filing deadline.

16 Accordingly,

17 **IT IS ORDERED** the Report and Recommendation (Doc. 18) is **ADOPTED** and the
18 Petition for Writ of Habeas Corpus (Doc. 1) is **DENIED** and **DISMISSED WITH**
19 **PREJUDICE**.

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21 **IT IS FURTHER ORDERED** Petitioner’s Motion For Leave to Amend Petition Claims
22 (Doc. 19), Motion For Leave to Amend (Doc. 20), and Motion for Evidentiary Hearing
23 (Doc. 24) **ARE DENIED**. The Clerk of Court shall close this case.

24 DATED this 7th day of October, 2008.

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Roslyn O. Silver
United States District Judge