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

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10	Kathoum Mutab,	)	No. CV-07-1415-PHX-DGC (CRP)
11	Petitioner,	)	<b>ORDER</b>
12	vs.	)	
13	Charles L. Ryan, Director of the Arizona	)	
14	Department of Corrections; and the	)	
15	Attorney General of the State of Arizona,	)	
16	Respondents.	)	

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Kathoum Mutab pled guilty in state court to four counts of attempted child molestation and dangerous crimes against children. He was sentenced to an aggravated 12-year prison term and lifetime probation. He presently is incarcerated at the Arizona State Prison–Winchester Unit, in Tucson.

Mutab filed a federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, arguing that *Blakely v. Washington*, 542 U.S. 296 (2004), entitles him to a jury determination of his aggravated sentence. Dkt. #1. United States Magistrate Judge Charles Pyle has issued a report and recommendation (“R&R”) recommending that the petition be dismissed as untimely. Dkt. #12. Mutab has filed an objection to the R&R. Dkt. #13. A response and reply have been filed. Dkt. ##18, 23. For reasons that follow, the Court will accept the R&R and dismiss the petition.

1 **I. R&R Review Standard.**

2 The Court must undertake a de novo review of those portions of the R&R to which  
3 specific objections are made. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Thomas*  
4 *v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th  
5 Cir. 2003). The Court may accept, reject, or modify, in whole or in part, the findings or  
6 recommendations made by the Magistrate Judge. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ.  
7 P. 72(b)(3).

8 **II. Discussion.**

9 Mutab was sentenced on May 27, 2004. Dkt. #10-1 at 10-14. He raised a *Blakely*  
10 challenge to his sentence in a state court petition for post-conviction relief filed on  
11 February 22, 2005. *Id.* at 18-24. The trial court denied the petition (*id.* at 44), and the court  
12 of appeals denied review on February 23, 2006 (*id.* at 50). Mutab did not seek review from  
13 the Arizona Supreme Court, and the time for doing so expired on March 25, 2006. *See* Ariz.  
14 R. Crim. P. 31.19(a).

15 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) established  
16 a one-year period of limitation for federal habeas petitions filed by state prisoners.  
17 28 U.S.C. § 2244(d)(1). That period generally begins to run when the state conviction  
18 becomes final by the conclusion of direct review or the expiration of the time for seeking  
19 such review. 28 U.S.C. § 2244(d)(1)(A). Mutab’s conviction became final on March 25,  
20 2006, when the time to seek review from the Arizona Supreme Court expired. Mutab had  
21 one year, until March 25, 2007, to file a federal habeas petition under the AEDPA.

22 The R&R concludes that the instant petition is untimely because it was filed on  
23 July 24, 2007, four months late. Dkt. #12 at 4. The R&R further concludes that Mutab has  
24 not shown an entitlement to statutory or equitable tolling of the limitation period. *Id.* at 6-7.

25 Mutab objects to the Magistrate Judge’s statements that Mutab did not file a collateral  
26 appeal and never sought collateral review. Dkt. #13 at 1-2. Mutab asserts that collateral  
27 review is not available under Arizona law where the defendant pleads guilty. *Id.* He  
28 further states that he is confused by the Magistrate Judge’s reference to “collateral appeal”

1 and “collateral review” because a habeas petition “is synonymous with ‘collateral  
2 review/appeal.’” *Id.*

3 The Magistrate Judge’s statement that Mutab never sought collateral review refers to  
4 a review of the final decision denying Mutab’s state court petition for post-conviction relief.  
5 *See* at 2, 6. The Magistrate Judge concluded that the one-year limitation period established  
6 by the AEDPA began to run when Mutab’s conviction became final on March 25, 2006  
7 (Dkt. #12 at 2), and the period was not statutorily tolled because Mutab never filed a  
8 collateral appeal from the denial of his petition for post-conviction relief (*id.* at 6). *See* 28  
9 U.S.C. § 2244(d)(2). This conclusion does not change even if, as Mutab asserts, Arizona law  
10 precluded him from seeking collateral review of the denial of his petition for post-conviction  
11 relief. Mutab has not otherwise presented a valid objection to the Magistrate Judge’s  
12 conclusion that statutory tolling does not apply.

13 Mutab objects to the Magistrate Judge’s finding that Mutab has not shown an  
14 entitlement to equitable tolling of the AEDPA’s limitation period. Dkt. #13 at 3-4. Equitable  
15 tolling “is not available in most cases,” *Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999),  
16 and is appropriate only if Mutab can show diligent pursuit of his rights and some  
17 “extraordinary circumstance” preventing his timely filing, *United States v. Battles*, 362 F.3d  
18 1195, 1197 (9th Cir. 2004). Mutab has not met either prerequisite.

19 Mutab claims that he did not know he could seek collateral review of the denial of his  
20 petition for post-conviction relief until July 2007, when he learned from a fellow inmate that  
21 a federal habeas petition could be filed. Dkt. #1 at 5. Mutab asserts that he diligently sought  
22 to bring his *Blakely* claim in federal court (*see id.*), but provides no facts supporting this  
23 assertion. Mutab has not shown that he diligently pursued his right to federal habeas relief.  
24 *See Bryant v. Schriro*, 499 F.3d 1056, 1061 (9th Cir. 2007) (“A petitioner must show that his  
25 untimeliness was caused by an external impediment and not by his own lack of diligence.”).

26 In August 1997, the Arizona Department of Corrections (“ADOC”) implemented  
27 Departmental Order 902 (“D.O. 902”), which disbanded case law collections in ADOC  
28 facilities but provided inmates with access to paralegals. *See Bryant*, 499 F.3d at 1059.

1 Mutab claims that D.O. 902 precluded him from learning the “language, interpretation, or  
2 application of the AEDPA” and he therefore should not be bound by the AEDPA’s one-year  
3 period of limitation. Dkt. #13 at 3-4. Mutab’s purported ignorance of the law “is not, by  
4 itself, an extraordinary circumstance warranting equitable tolling.” *Raspberry v. Garcia*, 448  
5 F.3d 1150, 1154 (9th Cir. 2006). Because Mutab has presented no evidence showing that he  
6 took advantage of paralegal assistance provided by the ADOC, he has failed to show that the  
7 implementation of D.O. 902 caused his untimeliness. *See Bryant*, 499 F.3d at 1061. The  
8 Magistrate Judge correctly concluded that Mutab is not entitled to equitable tolling. *See* Dkt.  
9 #12 at 7; *see also Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002) (the threshold  
10 necessary to trigger equitable tolling under the AEDPA “is very high, lest the exceptions  
11 swallow the rule”) (citation omitted).

12 **III. Conclusion.**

13 The R&R recommends that Mutab’s habeas petition be dismissed because it was filed  
14 four months after the statute of limitations expired and Mutab is not entitled to statutory or  
15 equitable tolling. Mutab’s objection to the R&R is without merit. The Court will accept the  
16 R&R and dismiss the petition.

17 **IT IS ORDERED:**

- 18 1. Magistrate Judge Charles Pyle’s report and recommendation (Dkt. #12) is  
19 **accepted.**
- 20 2. Petitioner Kathoum Mutab’s petition for writ of habeas corpus (Dkt. #1) is  
21 **dismissed.**
- 22 3. The Clerk is directed to **terminate** this action.

23 DATED this 24th day of November, 2009.

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28 David G. Campbell  
United States District Judge