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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Thomas John Burns, Jr.,)	
)	
Petitioner,)	No. CV-08-0641-PHX-PGR (MEA)
vs.)	
)	
Dora Schiro, et al.,)	<u>ORDER</u>
)	
Respondents.)	

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Aspey notwithstanding that no party has filed any objections to the Report and Recommendation¹, the Court finds that Magistrate Judge Aspey correctly concluded that the petitioner’s habeas petition, filed pursuant to 28 U.S.C. § 2254, should be dismissed as time-barred because the petitioner filed it after

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The record establishes that the copy of the Report and Recommendation that the Clerk of the Court twice mailed to the petitioner was twice returned to the Court as undeliverable, with the second one being returned because the petitioner was no longer in the custody of the Arizona Department of Corrections. The petitioner’s failure to obtain his copy of the Report and Recommendation does not affect the Court’s entry of this order inasmuch as the Court advised the petitioner in an order (doc. #2), entered on April 2, 2008, that he had to file a notice of any change in his address, and the record reflects that the petitioner understood that obligation as he has previously in this action twice filed notices of his change in address.

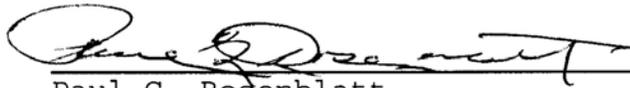
1 the applicable limitations period had expired and the petitioner has not
2 established that any ground for invoking the doctrine of equitable tolling exists.

3 Therefore,

4 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
5 (doc. #13) is accepted and adopted by the Court.

6 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C.
7 § 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied as
8 time-barred and that this action is dismissed with prejudice. The Clerk of the
9 Court shall enter judgment accordingly.

10 DATED this 17th day of November, 2008.

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14 Paul G. Rosenblatt
15 United States District Judge
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