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

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Frederick Larry St. Clair,

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No. CV08-2310-PHX-DGC (MHB)

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Petitioner,

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ORDER

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v.

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Charles L. Ryan, et. al.,

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Respondents.

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Pending before the Court are Petitioner Frederick Larry St. Clair’s petition for writ

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of habeas corpus, United States Magistrate Judge Michelle H. Burns’s Report and

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Recommendation (“R&R”), and Petitioner’s objections to the R&R. Dkt. ##1, 14, 15. The

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R&R recommends that the Court dismiss the petition as untimely under the AEDPA’s one-

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year statute of limitations. Dkt. #14 at 10. Petitioner makes two objections to the R&R:

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(1) that the one-year statute of limitations amounts to an unconstitutional suspension of the

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writ of habeas corpus, and (2) that the statute of limitations has not run because the State

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illegally prevented (and continues to prevent) Petitioner from filing an application by failing

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to provide notice of the AEDPA to Petitioner. Dkt. #15. The Court finds neither objection

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persuasive. The Court will accept the findings of the R&R and dismiss the petition.

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I. R&R Review Standard.

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Petitioner filed timely objections to the R&R. The Court must undertake a de novo

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review of those portions of the R&R to which specific objections are made. *See* Fed. R. Civ.

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P. 72(b); 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States*

1 *v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). The Court may accept, reject, or
2 modify, in whole or in part, the findings or recommendations made by the magistrate judge.
3 *See* 28 U.S.C. § 636(b)(1).

4 **II. Background.**

5 Petitioner was indicted on September 2, 2003 on multiple counts of dangerous crimes
6 against children, sexual abuse, and sexual conduct with a minor. Dkt. #12, Ex. A. Petitioner
7 entered into a plea agreement with the State on January 26, 2004, in which he agreed to plead
8 guilty to one count of sexual conduct with a minor, one count of attempted sexual conduct
9 with a minor, and one count of attempted molestation of a child. Dkt. #12, Ex. D. Petitioner
10 was sentenced on April 5, 2004, to a term of 20 years in prison and lifetime probation.
11 Dkt. #12, Exs. G, H.

12 While in prison, Petitioner filed two Rule 32 notices of post-conviction relief, both
13 of which were dismissed. On December 18, 2008 – four years after being sentenced –
14 Petitioner filed the present habeas petition. Dkt. #1. Petitioner admits that his petition is
15 untimely under the AEDPA.

16 **III. The one-year statute of limitations is not unconstitutional.**

17 The Constitution provides that “[t]he Privilege of the Writ of Habeas Corpus shall not
18 be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require
19 it.” U.S. Const. art. I, § 9, cl. 2. Congress has authority to determine the “proper scope of
20 the writ” by restricting it in constitutionally allowable ways. *Felker v. Turpin*, 518 U.S. 651,
21 664 (1996). Congress exercised this authority in the AEDPA and determined that a one-year
22 statute of limitations was an appropriate restriction. 28 U.S.C. § 2244(d)(1).

23 The statute of limitations is not an unconstitutional suspension of the writ. *Tinker v.*
24 *Moore*, 255 F.3d 1331, 1334 (11th Cir. 2001); *Wyzykowski v. Dep’t of Corrections*, 226 F.3d
25 1213, 1217 (11th Cir. 2000). To be unconstitutional, the statute of limitations would have
26 to bar relief entirely or render habeas relief “ineffective or inadequate to test the legality of
27 detention.” *Wyzykowski*, 226 F.3d at 1217. The statute of limitations restricts the time period
28 for filing a habeas corpus petition, but it does not render habeas relief ineffective. The

1 AEDPA also allows an “equitable tolling” exception when a movant “untimely files because
2 of extraordinary circumstances that are both beyond his control and unavoidable even with
3 diligence.” *Steed v. Head*, 219 F.3d 1298, 1300 (11th Cir. 2000); *see Frye v. Hickman*, 273
4 F.3d 1144 (9th Cir. 2001). Other than arguing that the State did not apprise him of the
5 AEDPA, Petitioner does not attempt to show that his filing was untimely because of
6 extraordinary circumstances.

7 **IV. The State did not prevent Petitioner from filing an application.**

8 Petitioner argues that the limitations period has not yet run because the State
9 prevented him from filing by not providing him notice of the AEDPA. Petitioner notes that
10 the period of limitation does not begin to run until any “impediment to filing an application
11 created by State action in violation of the Constitution or laws of the United States is
12 removed, if the applicant was prevented from filing by such State action.” 28 U.S.C. §
13 2244(d)(1)(B). Petitioner argues that the State never provided him with a copy of the
14 AEDPA, but there were three different sources of the AEDPA at Petitioner’s disposal in the
15 prison library. Dkt. #1, Ex. C. The statute was found within larger legal publications, but
16 that fact does not make the prison library inadequate or a denial of meaningful access.

17 Petitioner argues that the title of the AEDPA (The Antiterrorism and Effective Death
18 Penalty Act) is so vague that he, as a non-capital, non-terrorist inmate, was prevented from
19 filing a habeas corpus petition. But statutes often contain provisions not described in their
20 titles. The title of the AEDPA did not prevent Petitioner from filing this petition, nor has it
21 prevented thousands of other inmates from filing habeas corpus petitions since the AEDPA
22 was passed in 1996.

23 **IT IS ORDERED:**

- 24 1. Petitioner St. Clair’s objection (Dkt. #15) to the R&R is **denied**.
- 25 2. Magistrate Judge Michelle H. Burns’s R&R (Dkt. #14) is **accepted**.
- 26 3. Petitioner St. Clair’s petition for writ of habeas corpus (Dkt. #1) is **denied and**
27 **dismissed**.

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4. The Clerk of Court shall **terminate** this action.

DATED this 7th day of October, 2009.



David G. Campbell
United States District Judge