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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Justin Terrence Monroe,
Petitioner,

vs.

Charles L. Ryan,
Respondent.

No. CV-09-0239-PHX-PGR (MHB)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Burns in light of the petitioner’s Objection and Appeal from Magistrate’s Report and Recommendation (Doc. 24), the Court finds that the petitioner’s objections should be overruled as legally meritless and that the Magistrate Judge correctly determined that this action should be dismissed as time-barred as it was filed more than four and a half years after the expiration of the AEDPA’s one-year statute of limitations.¹

With regard to the dispositive timeliness issue, the petitioner disagrees with

¹

The Court agrees with the Magistrate Judge that the petitioner’s deadline under the AEDPA for filing this action, when the appropriate statutory tolling is factored in, was June 27, 2004; this action was, however, not filed until February 2, 2009.

1 the Magistrate Judge's determination that he is not entitled to have the limitations
2 period equitably tolled. The AEDPA's statute of limitations is subject to equitable
3 tolling only if the prisoner shows (1) that he has been pursuing his rights with
4 reasonable diligence, and (2) that some extraordinary circumstance stood in his
5 way and prevented the timely filing of his federal habeas petition. Holland v.
6 Florida, __ U.S. __, __ S.Ct. __, 2010 WL 2346549, at *12 (June 14, 2010).² The
7 Magistrate Judge concluded that the petitioner failed to meet either of these
8 conditions and the Court concurs.³

9 The gist of the petitioner's argument in his Objection for equitable tolling
10 appears to be that the long delay in him being able to obtain his trial transcripts
11 constitutes an extraordinary circumstance beyond his control that prevented the
12 timely filing of his habeas petition. The Court is unpersuaded. As the Magistrate
13 Judge noted, the petitioner has failed to sufficiently explain why the transcripts
14 were necessary to the filing of his habeas petition given that the factual

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16 The Court notes that it delayed the issuance of this Order pending the
17 Supreme Court's decision in Holland v. Florida given that the main issue to be
18 decided by the Supreme Court in that case was whether the AEDPA's limitations
period is subject to the doctrine of equitable tolling.

19 3

20 The Magistrate Judge correctly determined that the petitioner was not
21 reasonably diligent in that he filed his federal habeas petition over four and a half
22 years after the limitations period had expired, and that he let 204 days lapse after
23 the state trial court dismissed his first Rule 32 proceeding before he filed his
24 motion for reconsideration, that he let 373 days lapse between the trial court's
25 denial of his motion for reconsideration of the order denying his request for
26 transcripts and his second notice of post conviction relief (which was filed more
than a year after the expiration of the AEDPA's limitations period), he let 147
days lapse between the dismissal of his second notice of post-conviction relief
and his status request concerning his motion for appointment of counsel, and he
let 121 days lapse between the Arizona Supreme Court's order denying review in
his fourth Rule 32 proceeding and the filing of his federal habeas petition.

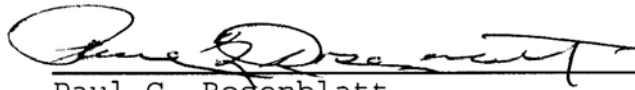
1 predicates for the claims raised in his petition were known to him prior to the
2 expiration of the AEDPA's limitations period. See e.g., Jihad v. Hvass, 267 F.3d
3 803, 806 (8th Cir.2001) ("Likewise, lack of access to a trial transcript does not
4 preclude a petitioner from commencing post-conviction proceedings and
5 therefore does not warrant equitable tolling.") Therefore,

6 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
7 (Doc. 23) is accepted and adopted by the Court.

8 IT IS FURTHER ORDERED that the petitioner's Petition for a Writ of
9 Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, is denied as time-barred and
10 that this action is dismissed. The Clerk of the Court shall enter judgment
11 accordingly.

12 IT IS FURTHER ORDERED that no certificate of appealability shall issue.

13 DATED this 13th day of July, 2010.

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15 
16 Paul G. Rosenblatt
United States District Judge