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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Artis Gipson,
Petitioner,

vs.

Charles Ryan, et al.,
Respondents.

No. CV09-0389-PHX-SRB

ORDER

Petitioner Artis Gipson filed his Petition for Writ of Habeas Corpus on February 23, 2009 raising numerous grounds for relief. Respondents answered asserting that the petition should be dismissed because it was not filed within the one-year statute of limitations provided in 28 U.S.C. § 2244(d)(1). On January 15, 2010, the Magistrate Judge issued his Report and Recommendation recommending that the petition be denied and dismissed with prejudice because it is barred by the statute of limitations. Petitioner submitted written objections signed February 3, 2010 and filed February 10, 2010, setting forth his argument as to why this Court should not apply the one-year statute of limitations to him. He argues that he should be excused from having the statute run from October 24, 2007, the date when he failed to timely file his Petition for Review of the denial of his Petition for Post-Conviction Relief in the Arizona Court of Appeals. Petitioner argues that he should have been granted his second requested extension of time because there was good cause to do so

1 since he did not have the hearing transcripts of the Post-Conviction Relief hearing by the
2 extended deadline for filing the Petition for Review.

3 In the Report and Recommendation the Magistrate Judge details the numerous filings
4 and orders in state court surrounding Petitioner's extension requests to file his Petition for
5 Review, the late filed Petition for Review, the Court of Appeals directions to Petitioner as
6 to the steps he could take to file a late Petition for Review and the Court of Appeals ultimate
7 denial of his Petition for Review as untimely.

8 The Court agrees with the Magistrate Judge that the one-year statute of limitations to
9 file the Petition for Writ of Habeas Corpus began to run on October 24, 2007 and that the
10 Petition was filed 122 days beyond the last date for filing. Petitioner's arguments about the
11 reasons why he should have been granted a second motion to extend time and why his
12 Petition for Review to the Arizona Court of Appeals should have been accepted do not
13 support equitable tolling of the one-year limitations period. As noted in the Magistrate
14 Judge's Report and Recommendation, extraordinary circumstances beyond Petitioner's
15 control did not prevent him from filing a timely petition in this Court. In fact, Petitioner has
16 not made the argument that he could not have filed his Petition for Writ of Habeas Corpus
17 within one-year of October 24, 2007 only that the Court should not apply the statute of
18 limitations.

19 IT IS ORDERED overruling Petitioner's Written Objections to the Magistrate's
20 Report and Recommendation.

21 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
22 Magistrate Judge as the order of this Court.

23 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is denied
24 and dismissed with prejudice.

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IT IS FURTHER ORDERED that a Certificate of Appealability is denied. Petitioner has not made a substantial showing of the denial of a constitutional right.

DATED this 4th day of March, 2010.



Susan R. Bolton
United States District Judge