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

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Arthur Stanley Jones,

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No. CV 09-926-PHX-DGC (JRI)

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Petitioner,

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**ORDER**

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vs.

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Charles L. Ryan, et al.,

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Respondents.

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Petitioner Arthur Stanley Jones seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. Magistrate Judge Jay R. Irwin filed a Report and Recommendation (“R&R”) that the motion and certificate of appealability be denied. Doc. 22. Petitioner objects to the R&R and does not request oral argument. Doc. 27. For the reasons that follow, the Court will accept the R&R and deny the motion.

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The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by a magistrate judge in a habeas case. *See* 28 U.S.C. § 636(b)(1). The Court must undertake *de novo* review of those portions of the R&R to which specific objections are made. *See* § 636(b)(1)(c); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

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Petitioner does not object to the R&R’s recitation of facts, and therefore the Court will adopt it summarily. Petitioner was convicted under Arizona law of 17 counts of sexual exploitation of a minor due to his possession of seventeen images of child pornography

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1 downloaded from the internet. Doc. 22 at 2. Petitioner was sentenced to 408 years in prison  
2 – i.e., 17 consecutive sentences of 24 years each – on January 3, 2000. *Id.* Petitioner filed  
3 two petitions for post-conviction relief in State court to no avail. *Id.* One of his arguments  
4 was that the prosecution failed to prove the pictures were of actual children as opposed to  
5 computer-generated or “morphed” images. *Id.* The Arizona Court of Appeals rejected the  
6 argument, noting that the pictures themselves were sufficient evidence and that Petitioner’s  
7 trial counsel had stipulated that they depicted children. *Id.* at 2-3. On April 30, 2009,  
8 Petitioner filed for habeas relief. Doc. 1.

9         The R&R concluded that the habeas petition is time-barred under 28 U.S.C.  
10 § 2244(d)(1) and that neither statutory tolling nor equitable tolling would save the petition.  
11 Doc. 22 at 5, 8-16. The R&R did not reach the exhaustion and procedural default issues in  
12 the case, nor did the R&R address the substantive merits of Petitioner’s seven constitutional  
13 claims.<sup>1</sup> *Id.* at 4, 17. Petitioner makes several specific objections to the R&R: (1) the time  
14 at which his state conviction became final was incorrectly decided (Doc. 27 at 2-3); (2) he  
15 was delayed in discovering the factual predicate for his claims due to his status as an indigent  
16 *pro se* litigant, his lack of knowledge of the habeas statute of limitations, and the lack of a  
17 law library at his prison (*id.* at 4); (3) he is entitled to habeas relief due to a change in law  
18 that made the statute under which he was convicted unconstitutional (*id.* at 5-6); (4) he is  
19 entitled to statutory and equitable tolling because he was not aware of the one-year statute  
20 of limitations for habeas petitions, he is a *pro se* litigant, he was not given notice of timing  
21 requirements, and he exercised reasonable diligence upon learning of these requirements (*id.*  
22 at 17-23); and (5) his claim of actual innocence entitles him to a review on the merits (*see*  
23 *id.* at 23).

24         The Court has reviewed Petitioner’s arguments *de novo* in light of his specific  
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26         <sup>1</sup> Petitioner’s grounds for habeas relief are: (1) actual innocence and miscarriage of  
27 justice; (2) sufficiency of the evidence; (3) Brady violation and miscarriage of justice;  
28 (4) significant change in the law and unconstitutional conviction; (5) ineffective assistance  
of counsel; (6) prosecutorial misconduct and omission of jury instructions; and (7) illegal  
sentence. Doc. 22 at 4.

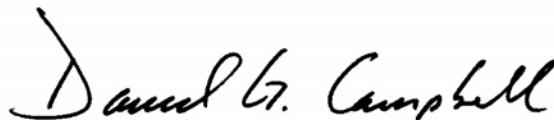
1 objections. The Court has independently reached the conclusion that Petitioner's arguments  
2 lack merit for the same reasons as presented in the well-reasoned R&R. Therefore, the R&R  
3 will be accepted.

4 The Court also notes a key theme running through Petitioner's objection: namely that  
5 *State v. Hazlett*, 73 P.3d 1258 (Ariz. App. 2003), changed Arizona law in such a way that  
6 Petitioner would not have been convicted had *Hazlett* been applied in his case. *See* Doc. 27.  
7 This is an argument on the merits of habeas relief. To qualify for a review on the merits,  
8 however, Petitioner must first establish that his petition was timely. 28 U.S.C. § 2244(d).  
9 Having accepted the R&R above, this Court holds that Petitioner has failed to submit a  
10 timely petition for habeas relief and has not established that his untimeliness is excusable.  
11 Accordingly, the petition for habeas relief will be denied as untimely. Moreover, a certificate  
12 of appealability will be denied because Petitioner has not made a substantial showing that  
13 denying the petition as untimely under these facts would deny him a constitutional right. 28  
14 U.S.C. § 2253(c)(2).

15 **IT IS ORDERED:**

- 16 1 The R&R (Doc. 22) is **accepted**.  
17 2. The petition for writ of habeas corpus (Doc. 1) is **denied**.  
18 3. A certificate of appealability is **denied**.

19 DATED this 2<sup>nd</sup> day of May, 2011.

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David G. Campbell  
United States District Judge  
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