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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Theodor R. Bendig,)	
)	
Petitioner,)	No. CV-09-1611-PHX-PGR (ECV)
)	
vs.)	
)	
Charles L. Ryan, et al.,)	<u>ORDER</u>
)	
Respondents.)	

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Voss notwithstanding that no party has filed any objection to the Report and Recommendation, the Court finds that the Magistrate Judge correctly determined that the petitioner’s habeas corpus petition, filed pursuant to 28 U.S.C. § 2254, should be dismissed as time-barred because it was filed some nine years after the expiration of the AEDPA’s one-year statute of limitations and the petitioner has made no showing that the limitations period should be equitably tolled.

The Court further finds that the petitioner is not entitled to the issuance of a certificate of appealability pursuant to 28 U.S.C. § 2254(c)(2) because the dismissal of his petition for a writ of habeas corpus is justified by a plain

1 procedural bar and jurists of reason would not find the procedural ruling
2 debatable, and that the petitioner is not entitled to appeal *in forma pauperis*.
3 pursuant to Fed.R.App.P. 24(a)(3)(A) because any such appeal would not be
4 taken in good faith given the Court's stated reason for the dismissal of his
5 petition.

6 Therefore,

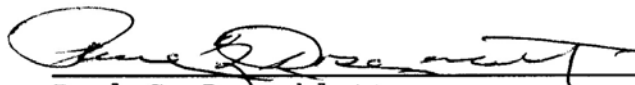
7 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
8 (Doc. 18) is accepted and adopted by the Court

9 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C.
10 § 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied and
11 that this action is dismissed with prejudice.

12 IT IS FURTHER ORDERED that no certificate of appealability shall issue
13 and that the petitioner is not authorized to appeal *in forma pauperis*.

14 IT IS FURTHER ORDERED that the Clerk of the Court shall enter
15 judgment accordingly.

16 DATED this 31st day of August, 2010.

17
18 
19 Paul G. Rosenblatt
United States District Judge