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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arthur Roy Mayhan,)	
)	
Petitioner,)	No. CV-09-1647-PHX-PGR (DKD)
)	
vs.)	
)	
Charles L. Ryan, et al.,)	<u>ORDER</u>
)	
Respondents.)	

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Duncan in light of the petitioner’s Objections to Magistrate Judge Mr. David K. Duncan[‘s] Report and Recommendation (Doc. 27), 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 after the expiration of the AEDPA’s one-year statute of limitations.¹

The Court agrees with the Magistrate Judge that the petitioner is not

¹

The Court agrees with the Magistrate Judge that the petitioner’s deadline under the AEDPA for filing this action was, at best, no later than April 6, 2009; this action, however, was not filed until July 22, 2009.

1 entitled to any equitable tolling because he has not demonstrated that some
2 extraordinary circumstance stood in his way and prevented the timely filing of his
3 federal habeas petition. Holland v. Florida, __ U.S. __, __ S.Ct. __, 2010 WL
4 2346549, at *12 (June 14, 2010).² Although the petitioner cursorily states in his
5 Objections that he is actually innocent of the charge for which he was convicted,
6 there is no actual innocence exception to the AEDPA's statute of limitations. Lee
7 v. Lambert, __ F.3d __, 2010 WL 2652505, at *3 (9th Cir. July 6, 2010) ("The one-
8 year limitations period established by [28 U.S.C.] § 2244(d) contains no explicit
9 exemption for petitions claiming actual innocence, and we decline to add one.")
10 (Internal quotation marks omitted). Therefore,

11 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
12 (Doc. 26) is accepted and adopted by the Court.

13 IT IS FURTHER ORDERED that the petitioner's Request[] [for] Status of
14 Objection to Report and Recommendation by United States Magistrate Judge Mr.
15 David K. Duncan (Doc. 29) is denied as moot.

16 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C.
17 § 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied as
18 time-barred and that this action is dismissed with prejudice. The Clerk of the
19 Court shall enter judgment accordingly.

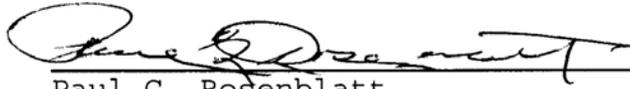
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24 The Court notes that it delayed the issuance of this Order pending the
25 Supreme Court's decision in Holland v. Florida given that the main issue to be
26 decided by the Supreme Court in that case was whether the AEDPA's limitations
period is subject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

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

2 DATED this 14th day of July, 2010.

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5 Paul G. Rosenblatt
6 United States District Judge
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