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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel Corona,

Petitioner,

vs.

Charles Ryan, et al.,

Respondents.

) No. CV11-1835-PHX-SRB

) **ORDER**

_____)

Petitioner Manuel Corona filed his Petition for Writ of Habeas Corpus on September 19, 2011 asserting that his rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution were violated because at the time he pled guilty he was taking prescription medication that may have affected his decision making ability and because his attorney was ineffective. Petitioner was convicted on May 9, 1978 after pleading guilty to one count each of First Degree Murder, Armed Robbery and Assault with a Deadly Weapon. His conviction became final no later January, 1980. The court-approved form Petitioner completed to bring his Petition asked him to explain why his Petition is timely if his judgment of conviction became final more than one year ago. Petitioner explained that until 1996 there was no fixed statute of limitations and asserted that extraordinary circumstances exist in his case, specifically, mental health issues that should excuse his failure to timely file his Petition. Other than that brief handwritten explanation, the Petition presented no

1 evidence of extraordinary circumstances or mental health issues that precluded the filing of
2 the Petition for Writ of Habeas Corpus until September 19, 2011.

3 Respondents filed a limited answer to the Petition asserting the untimeliness of the
4 Petition and requesting that it be dismissed. Respondents acknowledged that Petitioner
5 appeared to argue that he is entitled to equitable tolling as a result of mental health issues but
6 that he failed to support his claim with affidavits or supporting medical records or even any
7 explanation about how these alleged mental health issues prevented him from filing a timely
8 Petition. Respondents argue that Petitioner failed to affirmatively establish his entitlement
9 to the extraordinary remedy of equitable tolling. Petitioner filed no reply in support of his
10 Petition.

11 On February 23, 2012, the Magistrate Judge issued her Report and Recommendation
12 recommending that the Petition be denied and dismissed with prejudice because the Petition
13 was untimely and Petitioner failed to demonstrate entitlement to equitable tolling. The
14 Magistrate Judge also noted that Petitioner failed to offer any extraordinary circumstance that
15 would justify equitable tolling and merely argued his entitlement as a result of "mental health
16 issues" without any support with affidavits or supporting medical records or even an
17 explanation of how these issues prevented him from filing a timely Petition.

18 On April 5, 2012, Petitioner filed Objections to the Report and Recommendation of
19 the Magistrate Judge. In the Objections Petitioner does not dispute his failure to provide any
20 evidence in support of his claim for equitable tolling and for the first time attaches an
21 affidavit wherein he states that in 1997 he was placed in a mental health facility by the
22 Arizona Department of Corrections and remained there through 2007 or 2008. The affidavit
23 further states that in 2008, when he began taking new medication, he was returned to the
24 general prison population. The year 2008 also corresponds with the time Petitioner filed his
25 Second and Third Petition for Post-Conviction Relief, both of which were denied as being
26 precluded by state law and untimely filed.

27 Even if this recently filed affidavit could be considered as raising a viable issue of
28 equitable tolling, Petitioner provides no explanation for his failure to file a Petition within

1 one year of his return to the general population. The Petition was filed more than three years
2 later on September 19, 2011.

3 IT IS ORDERED that Petitioner's Objections to the Report and Recommendation of
4 the Magistrate Judge are overruled.

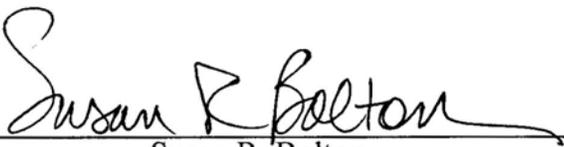
5 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
6 Magistrate Judge as the Order of this Court.

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

9 IT IS FURTHER ORDERED that a Certificate of Appealability and leave to proceed
10 in forma pauperis on appeal is denied because the dismissal of the Petition is justified by a
11 plain procedural bar and jurist of reason would not find the procedural ruling debatable.

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DATED this 11th day of May, 2012.



Susan R. Bolton
United States District Judge