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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Leroy Wiggins

No. CV-12-00388-PHX-DGC

10 Petitioner,

ORDER

11 v.

12 Charles L. Ryan, et al.

13 Respondents.

14 On May 1, 2003, Petitioner pled guilty in Maricopa County Superior Court to
15 three counts of sale or transportation of narcotic drugs, all class two felonies, and
16 admitted two prior felony convictions in exchange for having the remaining 16 felony
17 counts against him dismissed and a third prior felony conviction not counted towards his
18 sentence. Doc. 16 at 1-2. On December 10, 2004, the state court sentenced Petitioner to
19 the presumptive term of 15.75 years in prison for each of the three counts, with the first
20 two terms to run concurrently and the third to run consecutively, for a total of 31.5 years.
21 *Id.* at 2.

22 On October 25, 2011, more than six years after the deadline for filing an action for
23 state post-conviction relief, Petitioner filed a notice of post-conviction relief under
24 Arizona Rule of Criminal Procedure 32, asserting that (1) he was coerced into a plea
25 agreement in violation of his Sixth, Eighth, and Fourteenth Amendment rights, (2) his
26 counsel was ineffective because she knew he was coerced and she failed to file a timely
27 action seeking post-conviction relief, and (3) the untimeliness of his notice should be
28 excused because he had new information and the untimeliness was not his fault. *Id.* at 2-

1 3; see Doc. 14-1 at 62-64. The state court summarily dismissed Petitioner’s action as
2 untimely on November 1, 2011, finding that Petitioner had not asserted new facts or
3 shown any diligence in filing his petition. Doc. 16 at 3.

4 On February 2, 2012, Petitioner filed a petition for review with the Arizona Court
5 of Appeals that reasserted his claims and also argued that he suffered prosecutorial
6 misconduct in violation of his Fifth, Sixth, Eighth, and Fourteenth Amendment rights. *Id.*
7 at 3-4. The Arizona Court of Appeals denied the petition as untimely, and Petitioner did
8 not seek review by the Arizona Supreme Court. *Id.* at 4.

9 On February 23, 2012, Petitioner filed a *pro se* action seeking federal habeas relief
10 under 28 U.S.C. § 2254. Doc. 1. Petitioner asserts that (1) the Arizona Court of Appeals
11 erred when it dismissed his petition for review as untimely, (2) he was coerced into
12 accepting a plea agreement, (3) he was subjected to prosecutorial misconduct in violation
13 of his Fifth, Sixth, Eighth, and Fourteenth Amendment rights, (4) the trial court abused its
14 discretion when it sentenced him using “double-counting” of his prior conviction in
15 violation of Arizona law, (5) he was subjected to ineffective assistance of counsel in
16 violation of his Sixth Amendment rights, (6) the Arizona Court of Appeals violated his
17 right to due process when it dismissed his petition for review as untimely, and (7) the trial
18 court violated his due process rights when it dismissed his notice of post-conviction
19 relief. Docs. 1 at 6-12; 1-1 at 9-15.

20 On August 14, 2012, United States Magistrate Judge Mark E. Aspey issued a
21 Report and Recommendation (“R&R”). Doc. 16. The R&R recommends that the Court
22 deny the petition with prejudice because it is barred by the applicable statute of
23 limitations for federal habeas relief, Petitioner’s untimely filing of the state court action
24 for post-conviction relief did not re-start the already-expired statute of limitations, and
25 Petitioner has not met the standard for equitable tolling because he has not shown that
26 extraordinary circumstances prevented him from timely filing or that he was actually
27 innocent of the crimes. Doc. 16 at 5-10. Judge Aspey also found that Petitioner’s claims
28 are procedurally defaulted because Petitioner did not first present them in a timely

1 manner before the state court, and that he has not shown cause or prejudice arising from
2 his failure to present his claims or that he is factually innocent so that a fundamental
3 miscarriage of justice would result if his claims are not heard. *Id.* at 10-18. Judge Aspey
4 additionally found that Petitioner’s fourth claim, that he was over-sentenced under state
5 law due to “double-counting,” is not a cognizable claim in any event because federal
6 habeas relief is not available for alleged errors in the application of state law. *Id.* at 18.
7 Petitioner filed objections to the R&R on August 27, 2012. Doc. 17. For the reasons that
8 follow, the Court will accept the R&R and deny Petitioner’s petition.

9 **II. Standard of Review.**

10 A party may file specific written objections to an R&R’s proposed findings and
11 recommendations. The Court must undertake de novo review of those portions of the
12 R&R to which specific objections are made. The Court may accept, reject, or modify the
13 findings or recommendations in the R&R. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1).

14 **III. Analysis.**

15 Petitioner objects to Judge Aspey’s findings “for the reasons already stated in the
16 Habeas Petition as well as in the Reply to Respondent’s Limited Answer.” Doc. 17 at 2-
17 4. He makes no specific objections. In effect, Petitioner asks the Court to conduct a *de*
18 *novo* review of his claims, thereby duplicating the work of the magistrate judge. This
19 defeats Congress’ purpose in providing for magistrate judges to assist the district courts
20 in discharging the heavy workload of the federal judiciary. *Thomas v. Arn*, 474 U.S. 140,
21 147-152 (1985); *see Sullivan v. Schriro*, No. CV-04-1517, 2006 WL 1516005 (D. Ariz.
22 May 30, 2006). Judge Aspey has addressed each of Petitioner’s claims and thoroughly
23 discussed the reasons they are untimely and procedurally defaulted and why claim four
24 presents an invalid ground for federal habeas relief. Judge Aspey addressed Petitioner’s
25 failure to show that he is entitled to equitable tolling or that he meets the requirements for
26 having his claims heard on the merits despite his procedural default.

27 Because Petitioner does not make specific objections to Judge Aspey’s findings
28 and recommendations as required by 28 U.S.C. § 636(b)(1), the Court will deem his

1 objection ineffective and will accept the R&R. This ruling comports with the clear
2 language of Rule 72(b) that a district judge “shall make a de novo determination . . . of
3 any portion of the magistrate judge's disposition to which *specific written objection* has
4 been made[.]” Fed. R. Civ. P. 72(b)(2) (emphasis added); *see Sullivan*, 2006 WL
5 1516005 at *1. The Court is relieved of any obligation to review a general objection to
6 the R&R. *See Thomas*, 474 U.S. 140, 149 (no review at all is required for “any issue that
7 is not the subject of an objection.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
8 (9th Cir. 2003) (same).

9 **IT IS ORDERED:**

- 10 1. Magistrate Judge Mark E. Aspey’s R&R (Doc. 16) is **accepted**.
- 11 2. Petitioner’s petition for writ of habeas corpus (Doc. 1) is **denied**.
- 12 3. The Clerk of Court is directed to **terminate** this action.

13 Dated this 24th day of October, 2012.

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18 David G. Campbell
19 United States District Judge
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