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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Theodore Alan May,

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No. 12-CV-1086-PHX-PGR (JFM)

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Petitioner,

)

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v.

ORDER

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Charles L. Ryan, et. al.,

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Respondents.

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Before the Court is the Report and Recommendation of Magistrate Judge Metcalf (Doc. 17), which addresses Petitioner’s Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254 (Doc. 1). Petitioner has filed objections to the Report and Recommendation. (Doc. 18.)

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Magistrate Judge Metcalf recommends that the Court deny the petition as barred by the one-year statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244(d)(1)(A). Specifically, Magistrate Judge Metcalf concludes that the Petitioner is not eligible for statutory or equitable tolling. (Doc. 17 at 6–9.)

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Petitioner was sentenced on April 7, 2008. (Doc. 12, Ex. L.) His conviction became final on July 8, 2008, at which point his one-year limitation period commenced. He filed his petition on May 22, 2012, nearly three years past the one-year deadline.

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As stated in the Report and Recommendation, Petitioner is ineligible for statutory tolling. His PCR petition was dismissed as untimely under state law; it was therefore not “properly filed” so as to toll the statute of limitations. 28 U.S.C. §2244(d)(2); *Pace v.*

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1 *DiGuglielmo*, 544 U.S. 408 (2005). Petitioner is likewise ineligible for equitable tolling. He
2 suggests that his pro se status and lack of legal knowledge and resources impeded his ability
3 to file a timely petition. This conclusory assertion fails to meet the exceptionally high burden
4 required for a showing of “extraordinary circumstances beyond a prisoner’s control [that]
5 make it impossible to file a petition on time.” *Law v. Lamarque*, 351 F.3d 919, 922 (9th Cir.
6 2003); see *Felder v. Johnson*, 204 F.3d 168, 171 (5th Cir. 2000); *Rasberry v. Garcia*, 448
7 F.3d 1150, 1154 (9th Cir. 2006).

8 Having reviewed this matter *de novo* in light of Petitioner’s objections, the Court will
9 adopt the Report and Recommendation, deny the habeas petition, and dismiss the action.

10 Accordingly,

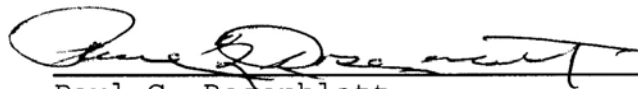
11 IT IS HEREBY ORDERED that Magistrate Judge Metcalf’s Report and
12 Recommendation (Doc. 17) is ACCEPTED and ADOPTED by the Court.

13 IT IS HEREBY ORDERED that Petitioner’s Petition for Writ of Habeas Corpus (Doc.
14 1) is DISMISSED and DENIED with prejudice.

15 IT IS FURTHER ORDERED DENYING a Certificate of Appealability.

16 IT IS FURTHER ORDERED that the Clerk of the Court shall close this case.

17 DATED this 8th day of July, 2013.

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20 Paul G. Rosenblatt
21 United States District Judge
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