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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

William Kenneth Qualls,
Petitioner,
v.
Charles L. Ryan, et al.,
Respondents.

No. CV-13-01288-PHX-JAT

ORDER

Pending before the Court are the magistrate judge’s Report and Recommendation (“R&R”) (Doc. 133), recommending that Petitioner’s Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus By a Person in State Custody (Non-Death Penalty) be denied, and Petitioner’s Application for Certificate of Appealability from the District Court and Statement of Reasons in Support (Doc. 138).

I. Background

Petitioner does not dispute, and the Court adopts, the procedural history described by the magistrate judge:

On October 3, 2003, at the conclusion of a five-day trial in the Maricopa County Superior Court, a jury found Qualls guilty of 10 felonies arising out of his sexual contact with minors. (Doc. 90, Ex. B) On November 3, 2003, the court sentenced Qualls to presumptive, consecutive

1 sentences totaling 96 years. (Doc. 90, Ex. C)

2 Qualls timely appealed arguing that the statute of limitations had run
3 before the State prosecuted him. (Doc. 90, Exs. D, E) The Court of Appeals
4 disagreed and affirmed his convictions. (Doc. 90, Exs. E, ZZ) Qualls timely
5 petitioned the Arizona Supreme Court for review. (Doc. 90, Exs. G, H) On
6 May 24, 2005, the Arizona Supreme Court denied Qualls' petition for
7 review. (Doc. 90, Ex. G) Qualls did not file a petition for a writ of certiorari
8 to the United States Supreme Court.

9 On July 27, 2005, Qualls filed a Notice of Post Conviction Relief in
10 Maricopa County Superior Court. (Doc. 90, Ex. I) The Superior Court
11 appointed counsel who, on September 23, 2005, notified the Court that he
12 did not find any claims to raise in postconviction relief proceedings. (Doc.
13 90, Ex. J) The Superior Court set an extended briefing deadline so that
14 Qualls could file a *pro per* Rule 32 petition. (Doc. 90, Ex. J) Qualls did not
15 file any petition before the Superior Court's December 12, 2005 deadline;
16 on January 20, 2006, the Superior Court dismissed Qualls' Rule 32
17 proceeding. (Doc. 90, Ex. K)

18 Successive Rule 32 Petitions. In March 2009 – over three years after
19 the Superior Court dismissed Qualls' Rule 32 proceeding – Qualls filed a
20 Notice and Petition of Post- Conviction Relief in Maricopa County
21 Superior Court. (Doc. 90, Exs. L, M) He argued that his sentence was not
22 imposed in accordance with *Apprendi v. New Jersey*, 530 U.S. 466 (2000),
23 and that his counsel was ineffective. The Court ruled in July 2009, first
24 noting that the substance of his *Apprendi* claim also included *Blakely v.*
25 *Washington*, 542 U.S. 296 (2004), but then concluding that neither
26 *Apprendi* nor *Blakely* applied because Qualls had received presumptive and
27 not aggravated sentences. The Court further concluded that his ineffective
28 assistance of counsel claim could not be raised in an untimely Rule 32

1 proceeding. Accordingly, the Court denied his Notice and Petition. (Doc.
2 90, Ex. O) Qualls appealed. (Doc. 90, Exs. P, Q, R, S) In February 2011,
3 the Court of Appeals denied review, and in August 2011, the Arizona
4 Supreme Court did, too. (Doc. 90, Exs. T, U, V, AAA)

5 In November 2009, Qualls filed in Maricopa County Superior Court
6 a Motion to Dismiss, along with other supporting documents, all of which
7 argued that his convictions should be vacated because the courts did not
8 have subject matter jurisdiction. (Doc. 90, Exs. W, X) The Court treated his
9 filing as a successive Rule 32 petition that did not raise any cognizable
10 claims and dismissed it. (Doc. 90, Ex. Y)

11 In July 2010, Qualls filed an Amended Petition for Writ of Habeas
12 Corpus in Maricopa County Superior Court. (Doc. 90, Ex. Z) In this
13 Petition, he appeared to argue lack of subject matter jurisdiction; violations
14 of due process, equal protection and public laws; invalid law and
15 unconstitutional statutes; fraud; kidnapping and unlawful imprisonment;
16 concealment of evidence; and ineffective assistance of counsel. (Doc. 90,
17 Ex. Z) In August 2010, the Court interpreted it as an untimely Rule 32
18 Petition that did not raise any cognizable claims and dismissed it. (Doc. 90,
19 Ex. AA) Qualls petitioned for review but, in April 2012, the Court of
20 Appeals denied his petition. (Doc. 90, Exs. BB, CC, DD, EE, HHH)

21 In April 2012, Qualls filed pleadings in the Superior Court which the
22 Court treated as untimely requests for reconsideration and denied them.
23 (Doc. 90, Exs. FF, GG, HH) In May 2012, Qualls filed a petition for review
24 in the Court of Appeals which was dismissed. (Doc. 90, Exs. II, JJ, CCC)

25 In October 2012, Qualls again filed a Petition for Writ of Habeas
26 Corpus in Maricopa County Superior Court. (Doc. 90, Ex. MM) In
27 November 2012, Qualls filed an amended Petition along with several
28 additional pleadings, all of which argued lack of subject matter jurisdiction,

1 violation of due process, invalid law, and unconstitutional statutes.¹ (Doc.
2 90, Ex. NN) The Superior Court again treated his pleadings as a successive
3 Rule 32 petition that did not raise any cognizable claims and dismissed it.
4 (Doc. 90, Ex. NN) Qualls filed a notice of appeal and, in April 2014, the
5 Court of Appeals granted review and denied relief. (Doc. 90, Exs. OO, PP,
6 FFF)

7 In December 2012, Qualls filed additional pleadings in Maricopa
8 County Superior Court. (Doc. 90, Ex. III) The Court noted that if, as Qualls
9 claimed, he was not seeking Rule 32 relief, then he should file a separate
10 civil action. (*Id.*) Accordingly, the Court took no action on his pleadings.
11 (*Id.*)

12 In July 2013, Qualls filed a second appellate challenge to the
13 Superior Court's August 2010 dismissal. (Doc. 90, Ex. EEE) In September
14 2013, the Court of Appeals granted review and denied relief, and in January
15 2014, the Arizona Supreme Court denied his petition for review. (Doc. 90,
16 Exs. KK, LL)

17 In September 2013, Qualls filed a Petition for Writ of Habeas
18 Corpus in the Court of Appeals. (Doc. 90, Exs. QQ, DDD) The Court of
19 Appeals dismissed his petition because it does not have original habeas
20 jurisdiction and because Qualls did not attempt to invoke appellate
21 jurisdiction or obtain review of the trial court's rulings. (*Id.*)

22 Petition for Writ of Habeas Corpus. On June 27, 2013, Qualls filed a
23 Petition for Writ of Habeas Corpus in this Court. (Docs. 2, 29) The Petition
24 was dismissed without prejudice while his state court proceedings finished.
25 (Doc. 28) Subsequently, this Court ordered Respondents to answer; before
26

27 ¹ Later in November 2012, Qualls filed a "Notice of State's Failure to Rule of
28 Habeas Corpus Request for Order Dismissing State's Action Request for Order" in the
Court of Appeals. (Doc. 90, Ex. BB) The Court of Appeals treated his motion as a special
action and, on November 21, 2012, declined to accept jurisdiction. (*Id.*)

1 the answer was filed, Qualls filed an Amended Petition along with several
2 other documents. (Docs. 67, 73) In the following months, Qualls filed
3 several additional motions and the Court has denied many of them. (Doc.
4 120)
5 (Doc. 133).

6 **II. Legal Standard**

7 This Court “may accept, reject, or modify, in whole or in part, the findings or
8 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). It is “clear that
9 the district judge must review the magistrate judge’s findings and recommendations *de*
10 *novo if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d
11 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in original); *Schmidt v. Johnstone*, 263
12 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (“Following *Reyna-Tapia*, this Court concludes
13 that *de novo* review of factual and legal issues is required if objections are made, ‘but not
14 otherwise.’”); *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d
15 1027, 1032 (9th Cir. 2009) (the district court “must review *de novo* the portions of the
16 [magistrate judge’s] recommendations to which the parties object.”). District courts are
17 not required to conduct “any review at all . . . of *any issue* that is not the subject of an
18 objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (emphasis added); *see also* 28
19 U.S.C. § 636(b)(1) (“A judge of the court shall make a *de novo* determination of those
20 portions of the [report and recommendation] to which objection is made.”).

21 The Petition in this case was filed under 28 U.S.C. § 2254 because Petitioner is
22 incarcerated based on a state conviction. With respect to the claims Petitioner exhausted
23 before the state courts, under 28 U.S.C. §§ 2254(d)(1) and (2) this Court must deny the
24 Petition on those claims unless “a state court decision is contrary to, or involved an
25 unreasonable application of, clearly established Federal law”² or was based on an

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27 ² Further, in applying “Federal law” the state courts only need to act in accordance
28 with Supreme Court case law. *See Clark v. Murphy*, 331 F.3d 1062, 1069 (9th Cir.
2003) (“In attempting to answer [whether the state court applied Federal law in an
objectively reasonable manner], the only definitive source of clearly established federal
law under AEDPA is the holdings (as opposed to the dicta) of the Supreme Court as of

1 unreasonable determination of the facts. *See Lockyer v. Andrade*, 538 U.S. 63, 71 (2003).
2 Further, this Court must presume the correctness of the state court’s factual findings
3 regarding a petitioner’s claims. 28 U.S.C. § 2254(e)(1); *Ortiz v. Stewart*, 149 F.3d 923,
4 936 (9th Cir. 1998).

5 “When applying these standards, the federal court should review the ‘last reasoned
6 decision’ by a state court” *Robinson v. Ignacio*, 360 F.3d 1044, 1055 (9th Cir. 2004).

7 **III. Discussion**

8 **A. Timeliness**

9 As the magistrate correctly pointed out, “[a] state prisoner seeking federal habeas
10 relief from a state court conviction is required to file the petition within one year of ‘the
11 date on which the judgment became final by the conclusion of direct review or the
12 expiration of the time for seeking such review.’” (Doc. 133 at 5) (quoting 28 U.S.C.
13 § 2244(d)(1)(A)). This filing period is tolled during the time in which a “properly filed
14 application for State post-conviction or other collateral review with respect to the
15 pertinent judgment or claim is pending” in the State courts. (*Id.*) (quoting 28 U.S.C. §
16 2244(d)(2)). A petitioner is entitled to equitable tolling when he can show “‘(1) that he has
17 been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in
18 his way’ and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649, 130 S. Ct.
19 2549, 2562, 177 L. Ed. 2d 130 (2010) (quoting *Pace*, 544 U.S. 408, 418 (2005)).

20 Although Petitioner’s conviction did not become final until August 22, 2005 when
21 his deadline to petition the Supreme Court of the United States for a writ of certiorari
22 passed, Petitioner’s period of limitations began tolling on July 27, 2005 when he timely
23 filed a notice for post-conviction relief (“PCR”). Petitioner never actually filed a petition
24 for PCR, and the Maricopa County Superior Court dismissed the PCR proceedings on

25
26 the time of the state court decision. *Williams [v. Taylor]*, 529 U.S. [362], 412 [(2000)].
27 While circuit law may be “persuasive authority” for purposes of determining whether a
28 state court decision is an unreasonable application of Supreme Court law, *Duhaime v.*
Ducharme, 200 F.3d 597, 600-01 (9th Cir.1999), only the Supreme Court’s holdings are
binding on the state courts and only those holdings need be reasonably applied. *See*
Williams, 529 U.S. at 412 (“The ... statutory language makes clear ... that § 2254(d)(1)
restricts the source of clearly established law to this Court’s jurisprudence.”).

1 January 20, 2006, at which time Petitioner’s period of limitations began to run. No other
2 tolling events occurred until March of 2009 when Petitioner filed a Notice of Petition of
3 Post-Conviction Relief in Maricopa County Superior Court. Given this record, the Court
4 concludes that Petitioner’s period of limitations lapsed on January 20, 2007. *See*
5 *Ferguson v. Palmateer*, 321 F.3d 820, 823 (9th Cir. 2003) (a fully lapsed limitations
6 period does not restart).

7 Petitioner believes that because his claims are jurisdictional in nature and because
8 subject matter jurisdiction may be brought up at any time, AEDPA’s statute of limitations
9 simply does not apply. (Doc. 140 at 2) (“Petitioner maintains that his petition is timely
10 due to the nature of his claims and these claims[,] when taken in the proper order and
11 meaning and together[,] preclude any time frames as AEDPA sets forth.”). Petitioner
12 cites no authority for this position, and the Court can find none. Indeed, it appears that
13 courts that have faced this same argument have rejected it. *Tucker v. Ryan*, 2014 WL
14 1329293, at *5 (D. Ariz. Apr. 1, 2014) (“[T]he Court is not persuaded by Petitioner’s
15 argument that, because the state trial court allegedly lacked subject matter jurisdiction,
16 the AEDPA’s statute of limitations does not apply to his case.”); *Crihalmean v. Ryan*,
17 2013 WL 5524509, at *13 (D. Ariz. Oct. 4, 2013) (same). The Court agrees with the
18 reasoning of these courts, and therefore concludes that Petitioner’s jurisdictional claims
19 do not exempt him from the statutory time limitations imposed by Congress on habeas
20 proceedings.

21 The only “extraordinary circumstance” Petitioner claims entitles him to equitable
22 tolling was his filing of a February 10, 2015 civil rights suit based on the same
23 allegations he makes in the petition at issue here. (Doc. 140 at 4); Notice of
24 Constitutional Question, *Qualls v. Arizona*, No. CV-15-00255-PHX-JAT(DKD) (D. Ariz.
25 Feb. 10, 2015). The Court fails to see—and Petitioner has done little to explain—why
26 Petitioner’s own filing of a civil rights case more than a year *after* he filed his petition,
27 “‘stood in his way’ and prevented timely filing” of the petition. *Holland*, 560 U.S. at 649.
28 Accordingly, the Court concludes that Petitioner is not entitled to equitable tolling.

1 Therefore, because Petitioner’s period of limitations lapsed on January 20, 2007
2 and Petitioner is not entitled to equitable tolling, the Court concludes that Petitioner’s
3 petition is time-barred and must be dismissed.

4 **B. State Law Error**

5 Even if Petitioner had timely filed his petition, the Court could not grant it because
6 Petitioner claims no violations of federal statutory or constitutional law. Petitioner sums
7 up his petition on page 16 of his objections to the R&R:

8 A) The A.R.S. were not created in a constitutional manner empowering
9 them to become valid state law.

10 B) This caused my criminal indictment to be fatally flawed.

11 C) This caused the trial court to lack subject matter jurisdiction.

12 D) Subject matter jurisdiction challenges were filed prior [to] and post trial.

13 The state failed to prove subject matter jurisdiction and the courts moved
14 and ruled without subject matter jurisdiction.

15 E) This caused all judgment[s] by the court to be void and a nullity.

16 (Doc. 140 at 16) (internal citations omitted). Elsewhere in his petition and objections,
17 Petitioner clarifies that, in his view, the Arizona Revised Statutes were enacted by “non-
18 legislative persons not authorized by the *state constitution* to create law.” (Doc. 140 at 2)
19 (emphasis added); *see also* (Doc. 2 at 12) (“In 1951 and 1953, the Arizona State
20 Legislature passed two (2) Senate Bills. In these Senate Bills, the actions of the Arizona
21 State Legislature are contrary to the *Arizona State Constitution*.” (emphasis added)).
22 Thus, it is clear that Petitioner’s arguments are rooted in state law. The Supreme Court
23 has “stated many times that federal habeas corpus relief does not lie for errors of state
24 law.” *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) (internal quotation marks omitted).
25 Therefore, even if Petitioner timely filed his petition, the Court must deny the petition.

26 **IV. Conclusion**

27 Accordingly,

28 **IT IS ORDERED** that the Report and Recommendation (Doc. 133) is

1 **ACCEPTED AND ADOPTED**; the objections (Doc. 140) are overruled; the Petition for
2 Writ of Habeas Corpus (Doc. 2) is **DENIED** and the Clerk of the Court shall enter
3 judgment of dismissal, with prejudice.

4 **IT IS FURTHER ORDERED** that Petitioner's Application for Certificate of
5 Appealability from the District Court and Statement of Reasons in Support (Doc. 138) is
6 **DENIED**; pursuant to Rule 11 of the Rules Governing Section 2255 cases, in the event
7 Petitioner files an appeal, the Court denies issuance of a certificate of appealability
8 because denial of the petition is based on a plain procedural bar and jurists of reason
9 would not find this Court's procedural ruling debatable. *See Slack v. McDaniel*, 529 U.S.
10 473, 484 (2000).

11 Dated this 8th day of May, 2015.

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James A. Teilborg
Senior United States District Judge