

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

William Worrell,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

No. CV-13-01683-PHX-PGR (MHB)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Burns in light of Petitioner’s Objection to the Magistrate’s Report and Recommendation (Doc. 20), the Court finds that the petitioner’s objections should be overruled and that his habeas corpus petition, initially filed on August 9, 2013 pursuant to 28 U.S.C. § 2254, should be dismissed with prejudice as time-barred because it was filed some three and one-half years after the expiration of the AEDPA’s one-year statute of limitations.¹

The petitioner does not dispute the Magistrate Judge’s finding that the limitations period, absent any equitable tolling, expired on February 5, 2010. What

¹

Because the habeas petition was not timely filed, the Court cannot resolve the merits of the petition.

1 the petitioner objects to is the Magistrate Judge's conclusion that the AEDPA's
2 limitations period should not be equitably tolled. The petitioner argues that he is
3 entitled to equitable tolling (1) because his state post-conviction relief counsel was
4 ineffective, (2) because he lacked notice and constructive knowledge of the
5 AEDPA's filing deadline set forth in 28 U.S.C. § 2244, and/or (3) pursuant to the
6 Supreme Court's decision in Martinez v. Ryan, 132 S.Ct. 1309 (2012).

7 The Court agrees with the Magistrate Judge that the petitioner has not met his
8 heavy burden of showing that equitable tolling is applicable here, which requires
9 that the petitioner establish that he pursued his rights diligently and that some
10 extraordinary circumstance prevented him from timely filing his habeas petition.
11 Holland v. Florida, 560 U.S. 631, 649 (2010). The petitioner cannot meet the first
12 prong of the test because the record shows that he waited some three years and
13 nine months to take further action in state court after the dismissal of his first PCR
14 proceeding, and that he waited some four and one-half years after the AEDPA's
15 limitations period began running to file his habeas petition. The petitioner also
16 cannot meet the second prong of the test because his lack of legal sophistication
17 and limited legal resources and his alleged failure to receive effective representation
18 during the applicable filing period, which the record shows did not amount to attorney
19 abandonment, do not constitute extraordinary circumstances. As the Magistrate
20 Judge correctly noted, the Martinez decision has no application to the issue of the
21 timeliness of the petitioner's habeas petition. See Arthur v. Thomas, 739 F.3d 611,
22 630 (11th Cir.2014) (Court stated that "the *Martinez* rule explicitly relates to excusing
23 a procedural default of ineffective-trial-counsel claims and does not apply to
24 AEDPA's statute of limitations or the tolling of that period."); Davis v. Ryan, 2015 WL
25 327456, at *2 (D.Ariz. Jan. 23, 2015) (Court noted that the Supreme Court's decision
26

1 in *Martinez v. Ryan*, while recognizing an equitable excuse for procedural default,
2 does not provide a time-bar excuse because procedural default and compliance with
3 the federal statute of limitations are two distinct inquiries.); *Owens v. Ryan*, 2014 WL
4 4722491, at *10 (D.Ariz. Sept. 23, 2014) (“*Martinez* has no application to the statute
5 of limitations in the AEDPA which governs Petitioner’s filing in federal court.”)
6 Therefore,

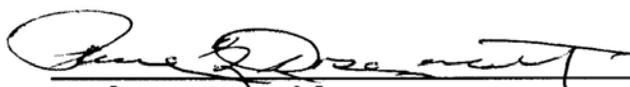
7 IT IS ORDERED that the Magistrate Judge’s Report and Recommendation
8 (Doc. 17) is accepted and adopted by the Court.

9 IT IS FURTHER ORDERED that petitioner William Worrell’s Amended Petition
10 Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody
11 (Doc. 5) is denied as time-barred and that this action is dismissed with prejudice.

12 IT IS FURTHER ORDERED that the petitioner’s Request for Issuance of COA
13 in the Alternative of Dismissal (Doc. 20) is denied and that no certificate of
14 appealability shall issue and that the petitioner is denied leave to appeal *in forma*
15 *pauperis* because jurists of reason would neither find it debatable whether the
16 petitioner has made a substantial showing of the denial of a constitutional right nor
17 whether the Court is correct in its procedural ruling.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
19 accordingly.

20 DATED this 28th day of April, 2015.

21
22 
23 Paul G. Rosenblatt
24 United States District Judge
25
26