

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Anthony Lee Terranova,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.
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No. CV-13-02572-PHX-SRB

ORDER

15 Petitioner Anthony Lee Terranova filed an Amended Petition for Writ of Habeas
16 Corpus on March 24, 2014 challenging his convictions and sentences in Maricopa
17 County Superior Court for third-degree burglary and first-degree murder. The procedural
18 history of the case is set out in the Magistrate Judge's Report and Recommendation.

19 The Magistrate Judge recommended that the Petition be denied and dismissed with
20 prejudice because the Petition was untimely, Petitioner was not entitled to equitable
21 tolling, and Petitioner had not met the actual innocence standard. Petitioner filed timely
22 written objections to the Report and Recommendation. Petitioner did not object to the
23 Magistrate Judge's conclusion that his petition for habeas relief was untimely and that he
24 was not entitled to equitable tolling. Petitioner's objections only address whether he has
25 met the actual innocence standard. The Court agrees with the Magistrate Judge that
26 Petitioner did not.

27 The Magistrate Judge noted, and Petitioner does not dispute, that a claim of actual
28 innocence requires that a petitioner show factual innocence, not legal insufficiency to

1 support the conviction. In review of the Petition for Writ of Habeas Corpus and the
2 Objections, the Court agrees with the Magistrate Judge that Petitioner's claim of actual
3 innocence is not a claim of factual innocence but a claim of legal insufficiency. As the
4 Magistrate Judge noted, Petitioner never said he did not kill the victim and only
5 challenged the legal sufficiency of the evidence supporting his conviction. In his
6 Objections Petitioner also does not deny shooting the victim but seems to be arguing that
7 the shooting was somehow justified. The Court agrees with the Magistrate Judge that
8 Petitioner has presented no evidence of actual factual innocence. His arguments of legal
9 innocence do not fall within the statute of limitations exception for actual innocence.

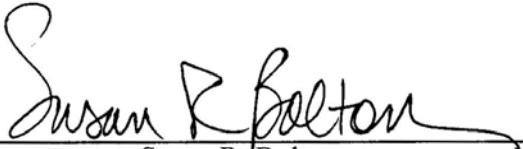
10 IT IS ORDERED overruling Petitioner's Objections to the Report and
11 Recommendation of the Magistrate Judge.

12 IT IS FURTHER ORDERED adopting the Report and Recommendation of the
13 Magistrate Judge as the Order of this Court. (Doc. 21)

14 IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Habeas Corpus
15 is denied and dismissed with prejudice. (Doc. 1)

16 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to
17 proceed *in forma pauperis* on appeal because dismissal of the Petition is justified by a
18 plain procedural bar and jurist of reason would not find the ruling debatable.

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20 Dated this 29th day of June, 2015.

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25 Susan R. Bolton
26 United States District Judge
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