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

James Edmund Kivlehen,
Petitioner,
v.
Charles L. Ryan, *et al.*,
Respondents.

No. CV-14-00279-PHX-JJT

ORDER

At issue is Petitioner James Edmund Kivlehen’s Petition for Writ of Habeas Corpus (Doc. 1), filed February 13, 2014. Magistrate Judge John C. Boyle issued a Report and Recommendation (“R&R”) in the matter on May 8, 2015 (Doc. 18), to which Petitioner filed an Objection (Doc. 21). For the reasons set forth in the R&R, this Court will deny the Petition.

In the R&R, Judge Boyle thoroughly and correctly analyzed the issues involved in the instant Petition, and because this Court will adopt the recommendations set forth in the R&R as well as the reasoning behind those recommendations, it will not restate those issues or their resolution here in detail. The Petition presents a very straightforward matter of the application of the time limitations imposed on a habeas petition under 28 U.S.C §2241 et seq. (AEDPA). As Judge Boyle recognized, determination of whether the Petition here is timely is a two-step matter. The first step—the application of simple arithmetic to the operative dates of Petitioner’s conviction in the underlying matter, the finality of that judgment after direct appeal, and the various filings seeking state post conviction review in state court and habeas review here—yields the conclusion that the

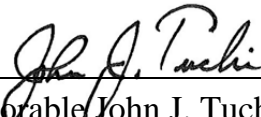
1 Petition is untimely, even after application of approximately 82 months of statutory
2 tolling while Petitioner's multiple applications for state post-conviction review were
3 pending. The second step is to determine whether Petitioner is entitled to equitable
4 tolling. For the reasons set forth with clarity on pages 7 and 8 of the R&R, Judge Boyle
5 correctly concluded that Petitioner did not meet the requirements entitling him to
6 equitable tolling as set forth in *Holland v. Florida*, 560 U.S. 631, 649 (2010). Petitioner
7 has not shown that he has been pursuing his rights diligently throughout the at least nine
8 years of non-tolled time since any habeas petition would have been due.

9 IT IS ORDERED adopting Magistrate Judge Boyle's R&R in its entirety and
10 incorporating same into this Order.

11 IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus
12 pursuant to 28 U.S.C. § 2254 (Doc. 1) and dismissing this matter with prejudice.

13 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to
14 proceed *in forma pauperis* on appeal in this matter because the dismissal of the instant
15 Petition is justified by a plain procedural bar and jurists of reason would not find the
16 procedural ruling debatable.

17 Dated this 31st day of July, 2015.

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20 _____
21 Honorable John J. Tuchi
22 United States District Judge
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