

1 NOT FOR PUBLICATION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 Wayne Calvin Simmons,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.
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No. CV-14-01415-PHX-SRB

ORDER

15 Petitioner, Wayne Calvin Simmons, filed a Petition for Writ of Habeas Corpus in
16 this Court on June 23, 2014 raising 18 separate claims. On April 2, 2015, the Magistrate
17 Judge issued his Amended Report and Recommendation recommending that the Petition
18 be denied as untimely because it was not filed within one year of “the date on which the
19 judgment became final by conclusion of direct review or the expiration of the time for
20 seeking such review.” 28 U.S.C. § 2244(d)(1)(A). The Magistrate Judge also found that
21 Petitioner was not entitled to equitable tolling of the one-year statute of limitations. On
22 April 15, 2015, Petitioner filed three documents in this Court in response to the Amended
23 Report and Recommendation. They are entitled: 1) Reaction to oppose the court’s and
24 respondent’s applied Report and Recommendation and order due to proceeded “Nullified
25 Jurisdictions” which occurred in Rule 32 proceeding by (prosecutorial procedure default),
26 misconduct, and contempt and (Defiance of-oath-of- office-duty), and succumbing to
27 prosecutor’s inducement, which all, infringed Petitioner Due Process to have Equal
28 Protection and Fairness of the Law by Rule 32 Management Unit Judge (Doc. 33), 2)

1 “Declaration” to declare an “exemption” against the (Ariz. State court rules of untimely
2 provisions) and the (federal district court’s A.E.D.P.A on year limitations) due to
3 ineffective assistance of counsel (Doc. 34), 3) “Declaration” to declare a degree of
4 “immunity” against the federal A.E.D.P.A statute of limitation) and the (states court’s un-
5 timely review provisions) via an abandonment and ineffective Rule 32/advisory counsel)
6 and via (case authority holdings); to (liberally construe), and (hold to Less Stringent
7 Standard); respect to (pro ee litigants pleadings); in opposition to the court’s and
8 respondent’s applied objection of the proposed finds and recommendations (Doc. 35).

9 Petitioner does not dispute the procedural history of this case from the date of his
10 conviction until the filing of his Petition for Writ of Habeas Corpus in this Court. With
11 respect to the tolling of the one-year statute of limitations, Petitioner argues that the
12 Petition for Special Action to the Arizona Supreme Court that he filed to challenge the
13 Arizona Superior Court’s denial of his Petition for Post-Conviction Relief rather than
14 filing a Petition for Review to the Arizona Court of Appeals should result in the tolling of
15 the statute of limitations. However, as noted by the Magistrate Judge in his Report and
16 Recommendation, a special action is not an application for state post-conviction or other
17 collateral review within the meaning of § 2244(d)(2), quoting Hardiman v. Galaz, 58 Fed.
18 Appx. 708, 710 (9th Cir. 2003) and other cases. See, Doc. 32, Amended Report and
19 Recommendation, at 4. Petitioner also argues that he is entitled to equitable tolling
20 because of what he characterizes as errors of his attorney, the prosecuting attorney and
21 the judge in connection with his Rule 32 proceedings. He also argues again that the filing
22 of his Special Action petition to the Arizona Supreme Court somehow entitles him to
23 equitable tolling.

24 Petitioner concedes that he may have made blunders but because he is a lay
25 person proceeding without an attorney and because his attorney allegedly abandoned him,
26 was ineffective and incompetent, and committed professional misconduct against him he
27 should be excused from the one-year statute of limitations. These grounds for equitable
28 tolling are different from the grounds that were originally argued to the Magistrate Judge.

1 Even if considered by this Court, they do not allow for equitable tolling. Additionally,
2 the complaints he is making about his attorney, the prosecuting attorney and the judge
3 occurred during his Rule 32 proceedings when the statute of limitation was tolled by
4 operation of law. Petitioner presents no facts to support equitable tolling during the
5 period of time that the statute of limitations was running.

6 In his two declarations, also filed on April 15, 2015, Petitioner asks that he be
7 exempted from the statute of limitations and asks that he be granted immunity from the
8 statute of limitations. This Court is not authorized to grant either such request. The Court
9 agrees with the Amended Report and Recommendation of the Magistrate Judge that the
10 Petition for Writ of Habeas Corpus filed in this Court on June 23, 2014 was untimely and,
11 therefore, this Petition must be denied and dismissed with prejudice.

12 IT IS ORDERED overruling Petitioner's Objections to the Report and
13 Recommendation of the Magistrate Judge (Doc. 33).

14 IT IS FURTHER ORDERED adopting the Amended Report and Recommendation
15 of the Magistrate Judge as the Order of this Court. (Doc. 32)

16 IT IS FURTHER ORDERED denying Petitioner's declarations requesting
17 immunity against the statute of limitations and an exemption from the statute of
18 limitations (Docs. 34 & 35).

19 IT IS FURTHER ORDERED denying Petitioner's Petition for Writ of Habeas
20 Corpus and dismissing the Petition with prejudice.

21 IT IS FURTHER ORDERED denying a certificate of Appealability and leave to
22 proceed *in forma pauperis* on appeal because dismissal of the Petition is justified by a
23 plan procedural bar and jurists of reason would not find the ruling debatable.

24 Dated this 12th day of May, 2015.

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Susan R. Bolton
United States District Judge