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

Anthony William Coleman,  
Petitioner,  
v.  
Attorney General of the State of Arizona, et  
al.,  
Respondents.

No. CV-14-02434-PHX-PGR  
**ORDER**

The Court has before it the Report and Recommendation (“R&R”) (Doc. 13) of Magistrate Judge Michelle H. Burns, filed on September 15, 2015. Petitioner has filed objections to the R&R (Doc. 14). The Court, having reviewed de novo the R&R, Petitioner’s objections, and the entire record in this matter, will overrule the objections.

Petitioner’s objections relate to the R&R’s determination that *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), is inapplicable and does not excuse the untimeliness of Petitioner’s federal habeas petition. Specifically, Petitioner contends that he did not learn of the *Martinez* decision until 2013, so he could not have filed his claim based on *Martinez* until that time.

As found in the R&R, *Martinez* is inapplicable here. At issue in *Martinez* was “whether a federal habeas court may excuse a *procedural default* of an ineffective-assistance claim when the claim was not properly presented in state court due to an attorney’s errors in an initial-review collateral proceeding.” *Martinez*, 132 S. Ct. at 1313 (emphasis added). The Supreme Court held that such a procedural default could be

1 excused if the failure to raise the issue in state court was due to the ineffective assistance  
2 of counsel (or lack of counsel) at the initial-review collateral proceeding. *Id.* at 1320.

3 Thus, *Martinez* is applicable when the issue is *procedural default* of a claim.  
4 *Martinez* did not, however, address and is therefore not applicable when the issue is  
5 whether a claim is *untimely* due to the running of the AEDPA limitations period. *See*  
6 *Brown v. Ryan*, 2015 WL 3990513, at \*9 (D. Ariz. 2015) (“The *Martinez* decision does  
7 not address the timeliness of a habeas petition or the tolling of the AEDPA limitations  
8 period.”); *Wheelwright v. Wofford*, 2014 WL 3851155, at \*3 (E.D. Cal. 2014) (“Although  
9 the rule in *Martinez* is an equitable one, it applied only to procedural default issues and  
10 does not apply to equitable tolling principles pertinent to the AEDPA limitations issue.”);  
11 *Perry v. Uribe*, 2014 WL 4463120, at \*3 (C.D. Cal. 2014) (“*Martinez* dealt solely with  
12 the state procedural default doctrine, which is entirely different from the issue presented  
13 here of whether Petitioner herein (including the ineffective assistance of trial counsel  
14 claim alleged in Ground 2) was time barred under the AEDPA statute of limitations.”);  
15 *see also White v. Martel*, 601 F.3d 882, 884 (9th Cir. 2010) (the adequacy analysis used  
16 to decide procedural default issues is inapplicable to the determination of whether a  
17 federal habeas petition was barred by the AEDPA statute of limitations).

18 In the present case, the issue is not whether Petitioner’s claim is procedurally  
19 defaulted, but rather whether Petitioner’s claim is time barred by the AEDPA limitations  
20 period. Accordingly, *Martinez* is inapplicable and the timing of when Petitioner learned  
21 of *Martinez* is irrelevant.

22 The Court agrees with and adopts the R&R, including the determination that the  
23 statute of limitations ran prior to Petitioner’s filing of his habeas petition, and that his  
24 petition is therefore untimely.

25 IT IS ORDERED that the Magistrate Judge’s Report and Recommendation (Doc.  
26 13) is accepted and adopted by the Court.

27 IT IS FURTHER ORDERED that Petitioner’s Amended Petition Under 28 U.S.C.  
28 § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. 5) is denied and  
that this action is dismissed with prejudice. The Clerk of the Court shall enter judgment

1 accordingly.

2 IT IS FURTHER ORDERED that no certificate of appealability shall be issued  
3 and that the petitioner is not entitled to appeal *in forma pauperis* because dismissal of the  
4 Petition is justified by a plain procedural bar and reasonable jurists would not find the  
5 procedural ruling debatable.

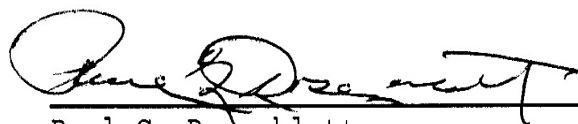
6 Dated this 4th day of November, 2015.

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Paul G. Rosenblatt  
United States District Judge

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