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

Douglas Paul Phillips,
Petitioner,
v.
Charles L Ryan, et al.,
Respondents.

No. CV-16-01319-PHX-ROS
ORDER

A district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). Where any party has filed timely objections to the R&R, the district court’s review of the part objected to must be *de novo*. *Id.* If, however, no objections are filed, the district court need not conduct such a review. *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003).

Magistrate Judge Deborah M. Fine issued a Report and Recommendation (“R&R”) recommending the petition for writ of habeas corpus be denied and dismissed as untimely because it was filed years after the one-year statute of limitations expired. (Doc. 18 at 1-2.) The R&R applied statutory tolling under 28 U.S.C. § 2244(d)(2) for the time a “properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending,” and concluded the one-year limitation period expired on Monday, November 8, 2010. (Doc. 18 at 5-6.) The R&R also found Petitioner failed to establish that equitable tolling applied or that the

1 untimeliness may be excused by an equitable exception. (*Id.* at 6-9.) Here, Petitioner did
2 not file his habeas petition until May 3, 2016, over five after the statute of limitations
3 expired. (Doc. 1.)

4 Petitioner timely objected to the R&R, and he argued that a judge in his
5 underlying criminal case should have found his motion to dismiss timely and granted his
6 motion in the underlying criminal case. (Doc. 19 at 2.) Petitioner also argued another
7 abuse of discretion occurred when a court found that “no prosecutorial misconduct was
8 present in the records of [his] first trial.” (*Id.* at 3) (emphasis omitted). However,
9 Petitioner did not object to the R&R’s timeliness analysis, nor did Petitioner establish a
10 basis for showing his habeas petition is indeed timely.

11 Accordingly,

12 **IT IS ORDERED** the Report and Recommendation (Doc. 18) is **ADOPTED** and
13 the petition for writ of habeas corpus is **DENIED** with prejudice.

14 **IT IS FURTHER ORDERED** a Certificate of Appealability and leave to proceed
15 in forma pauperis on appeal are **DENIED** because the dismissal of the petition is justified
16 by a plain procedural bar and jurists of reason would not find the procedural ruling
17 debatable.

18 Dated this 3rd day of August, 2017.

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22 Honorable Roslyn O. Silver
23 Senior United States District Judge
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