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## IN THE UNITED STATES DISTRICT COURT

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## FOR THE DISTRICT OF ARIZONA

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Alexander Jeremiah Clifford Brown, )

No. CV-16-01635-PHX-SPL

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Petitioner, )

**ORDER**

10

v. )

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Charles L. Ryan, et al., )

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Respondents. )

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The Petitioner, Alexander Jeremiah Clifford Brown, at the time of the Petition, was incarcerated in Kingman, Arizona. The Petitioner, on January 1, 2004, was convicted of one count of child abuse as a dangerous offense (count one) and one count of non-dangerous child abuse (count two), and subsequently sentenced to 17 years imprisonment (Doc. 11-1, Ex. E, at 25-29).

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Petitioner filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1). Respondents filed a Limited Answer (Doc. 11), and Petitioner filed a Reply (Doc. 14). United States Magistrate Judge John Z. Boyle has issued a Report and Recommendation (“R&R”) recommending that the Court deny and dismiss the petition (Doc. 16). The Petitioner subsequently filed a Motion to Stay Execution of Sentence (Doc. 17), and timely filed Objections to the R&R (Doc. 18). Additionally, the Petitioner filed a Motion for Leave to File Supplemental Pleadings (Doc. 19). Petitioner does not object to the correctness of the factual background in the R&R, which the Court adopts and incorporates. For the following reasons, the Court accepts and adopts the R&R, and

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1 denies the petition.

2 A district judge “may accept, reject, or modify, in whole or in part, the findings or  
3 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). When a party files  
4 a timely objection to an R&R, the district judge reviews *de novo* those portions of the  
5 R&R that have been “properly objected to.” Fed. R. Civ. P. 72(b). A proper objection  
6 requires specific written objections to the findings and recommendations in the R&R. *See*  
7 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); 28 U.S.C. §  
8 636(b)(1). It follows that the Court need not conduct any review of portions to which no  
9 specific objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also Thomas v.*  
10 *Arn*, 474 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review is  
11 judicial economy). Further, a party is not entitled as of right to *de novo* review of  
12 evidence or arguments which are raised for the first time in an objection to the R&R, and  
13 the Court’s decision to consider them is discretionary. *United States v. Howell*, 231 F.3d  
14 615, 621-622 (9th Cir. 2000).

15 When the Petitioner filed his Writ of Habeas Corpus, he raised one ground for  
16 relief alleging ineffective assistance of counsel in connection with his plea proceedings  
17 and his state post-conviction proceedings (Doc. 1). Petitioner specifically objected to the  
18 R&R arguing Judge Boyle failed to interpret the AEDPA’s one-year time limit, held the  
19 Petitioner to a higher degree of due diligence and that his lawyers failed to have a mental  
20 competency evaluation performed on the Petitioner prior to any discussions of  
21 adjudication in the case (Doc. 18).

22 The Court finds that Judge Boyle correctly concluded that when the Petitioner  
23 filed the second and third successive PCR petitions, the statute of limitations was not  
24 tolled. Furthermore, the Court finds that if the deadline was reset to reflect the date of the  
25 plea agreement amendment, the statute of limitations would have expired years prior.  
26 The Court did not find any extraordinary circumstances or diligence on the part of the  
27 Petitioner that would trigger his entitlement to equitable tolling. Additionally, this Court  
28 did not find that Judge Boyle held the Petitioner to a higher degree of due diligence.

1 The Court has undertaken an extensive review of the sufficiently developed record  
2 and the issues presented in the objections. Having carefully reviewed the record, the  
3 Petitioner has not shown that he is entitled to habeas relief pursuant to 28 U.S.C. §  
4 2244. Finding none of Petitioner's objections have merit, the R&R will be adopted in  
5 full. Accordingly,

6 **IT IS ORDERED:**

7 1. That Magistrate Judge Boyle's Report and Recommendation (Doc. 16) is  
8 **accepted** and **adopted** by the Court;

9 2. That the Motion to Stay Execution of Sentence (Doc. 17) is **denied**;

10 3. That the Motion for Leave of the Court to File Supplemental Pleadings  
11 (Doc. 19) is **denied**;

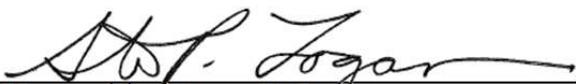
12 4. That the Petitioner's Objections (Doc. 18) are **overruled**;

13 5. That the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2244  
14 (Doc. 1) is **denied** and this action is **dismissed with prejudice**;

15 6. That a Certificate of Appealability and leave to proceed *in forma pauperis*  
16 on appeal are **denied** because the dismissal of the Petition is justified by a plain  
17 procedural bar and reasonable jurists would not find the ruling debatable; and

18 7. That the Clerk of Court shall **terminate** this action.

19 Dated this 6th day of July, 2017.

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22 Honorable Steven P. Logan  
23 United States District Judge  
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