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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Leonard Dwight O'Dell,
10 Petitioner,

11 v.

12 Charles L Ryan, et al.,
13 Respondents.
14

No. CV-17-04285-PHX-DJH

ORDER

15 This matter is before the Court on Petitioner's Petition for Writ of Habeas Corpus
16 pursuant to 28 U.S.C. § 2254 (Doc. 1) and the Report and Recommendation ("R&R")
17 issued by United States Magistrate Judge Michelle H. Burns (Doc. 12). Pursuant to a plea
18 agreement, on September 6, 2012, Petitioner was convicted in Maricopa County Superior
19 Court of promoting prison contraband, aggravated assault, and destruction of or injury to a
20 public jail. (*See* Doc. 6). Petitioner was sentenced to a 9.25-year prison term. (Doc. 11,
21 Exh. O).

22 Petitioner raises one ground for relief in his Petition. Specifically, he claims that he
23 received ineffective assistance of counsel and that his Sixth Amendment right "to not be
24 subjected to badgering harassment or cross[-]examination w/o the presence of a lawyer"
25 was violated. (Doc. 1 at 6; Doc. 6 at 11). After a careful examination of the issues, Judge
26 Burns decided that Petitioner's claims were untimely because he failed to file his habeas
27 petition within the one-year statute of limitations period. (Doc. 12 at 6). Judge Burns
28 determined that by pleading guilty, Petitioner had waived his right to a direct appeal and

1 Petitioner thus had 90 days after the trial court sentenced him to file an “of-right” petition
2 for post-conviction relief (“PCR”) under Rule 32 of the Arizona Rules of Criminal
3 Procedure. She further found that even assuming the PCR petition was timely filed, the
4 state court dismissed it on June 27, 2013. From that date, Petitioner had 30 days to file a
5 petition for review in the Arizona Court of Appeals, which he did not do. As a result, Judge
6 Burns found that Petitioner’s case became final and the statute of limitations for his habeas
7 petition began to run on July 29, 2013. The one-year statute made it necessary for
8 Petitioner to initiate his habeas proceedings on or before July 29, 2014. Although
9 Petitioner initiated two habeas proceedings – one on October 25, 2016 (in CV-16-03695-
10 PHX-DJH (MHB)), and one on November 21, 2017 (the current matter) – both were
11 beyond this deadline, and absent tolling, were untimely. Judge Burns found that Petitioner
12 did not establish that he was entitled to equitable tolling or that an equitable exception to
13 the limitations period should apply. She specifically considered Petitioner’s attempts to
14 explain his untimeliness and found that they did not constitute extraordinary circumstances
15 that would justify equitably tolling of the statute. (Doc. 12 at 7). Accordingly, Judge Burns
16 recommended that the habeas petition be denied and dismissed with prejudice. (*Id.*)

17 Judge Burns advised the parties that they had fourteen days to file objections and
18 that the failure to file timely objections “may result in the acceptance of the Report and
19 Recommendation by the District Court without further review.” (Doc. 12 at 8) (citing
20 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). The parties have not
21 filed objections and the time to do so has expired. Absent any objections, the Court is not
22 required to review the findings and recommendations in the R&R. *See Thomas v. Arn*, 474
23 U.S. 140, 149 (1989) (the relevant provision of the Federal Magistrates Act, 28 U.S.C. §
24 636(b)(1)(C), “does not on its face require any review at all . . . of any issue that is not the
25 subject of an objection.”); *Reyna-Tapia*, 328 F.3d at 1121 (same); Fed. R. Civ. P. 72(b)(3)
26 (“The district judge must determine de novo any part of the magistrate judge’s disposition
27 that has been properly objected to.”).

28 Nonetheless, the Court has reviewed the R&R and agrees with its findings and

1 recommendations. The Court will, therefore, accept the R&R and deny the habeas petition.
2 *See* 28 U.S.C. § 636(b)(1)(C) (“A judge of the court may accept, reject, or modify, in whole
3 or in part, the findings or recommendations made by the magistrate judge.”); Fed.R.Civ.P.
4 72(b)(3) (same).

5 Accordingly,


6 **IT IS ORDERED** that Magistrate Judge Burns R&R (Doc. 12) is **accepted** and
7 **adopted** as the order of this Court.

8 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus pursuant
9 to 28 U.S.C. § 2254 (Doc. 1) is **denied** and **dismissed with prejudice**.

10 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
11 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*
12 on appeal are **denied** because dismissal of the Petition is justified by a plain procedural bar
13 and jurists of reason would not find the procedural ruling debatable.

14 **IT IS FURTHER ORDERED** that the Clerk of Court shall terminate this action
15 and enter judgment accordingly.

16 Dated this 8th day of January, 2019.

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20 Honorable Diane J. Humetewa
21 United States District Judge
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