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

John Plasko,
Plaintiff,
v.
State of Arizona, *et al.*,
Defendants.

No. CV-21-00176-PHX-JJT (ESW)
ORDER

At issue is the Report and Recommendation (Doc. 15, “R&R”) submitted by United States Magistrate Judge John Z. Boyle recommending the Court dismiss as untimely the Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. 5). Judge Boyle advised the parties they had 14 days after service of the R&R to file any objections thereto, and warned that “[f]ailure to timely file objections to the R&R may result in acceptance of the Report and Recommendation by the District Court without further review” pursuant to *United States v. Reyna-Tapia*, 328 F. 3d 1114, 1121 9th Cir. 2003). The time to file objections has long passed and Petitioner filed none. The Court therefore may accept the R&R and its underlying analysis.

Even upon an independent review of the R&R, the Court concludes it is correctly decided. Petitioner’s state conviction became final for purposes of habeas review on May 10, 2018, thirty days after the state trial court dismissed Petitioner’s PCR proceeding. AEDPA’s one-year limitations period for seeking habeas review began running the following day, and expired May 11, 2019. The Petition in this matter, filed November 20,

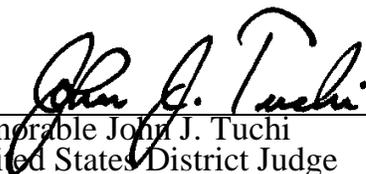
1 2020, was therefore over 18 months late, and no statutory or equitable tolling is supported
2 by any evidence. Petitioner also does not qualify for the “miscarriage of justice” exception,
3 as he has made no showing of “new reliable evidence of actual innocence” as required
4 under *Schlup v. Delo*, 513 U.S. 298, 324 (1995).

5 **IT IS ORDERED** adopting in whole the R&R (Doc. 15) in this matter.

6 **IT IS FURTHER ORDERED** dismissing as untimely the Amended Petition
7 (Doc. 5). The Clerk of Court shall close this matter.

8 **IT IS FURTHER ORDERED** denying a Certificate of Appealability and leave to
9 proceed in forma pauperis in this matter, as the Court finds that dismissal is justified by a
10 plain procedural bar and reasonable jurists would not find the procedural ruling debatable.

11 Dated this 16th day of July, 2021.

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14 Honorable John J. Tuchi
15 United States District Judge
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