

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**WO**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Donald Timothy Bradley,  
Petitioner,

vs.

Charles L. Ryan, et al.,  
Respondents.

No. CV-09-8215-PCT-PGR (ECV)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Voss in light of Petitioner’s Response and Objection to Magistrate Judge’s Report and Recommendation to Deny by Procedural Default (Doc. 22), the Court finds that the petitioner’s objections should be overruled and that the Magistrate Judge correctly determined that the petitioner’s habeas corpus petition, filed pursuant to 28 U.S.C. § 2254, should be dismissed as time-barred because it was filed, at the very least, almost one year after the expiration of the AEDPA’s one-year statute of limitations and the petitioner has made no showing that the limitations period should be equitably tolled.<sup>1</sup>

<sup>1</sup>

The petitioner’s objections to the Report and Recommendation in effect go just to the merits of his habeas petition, as does his motion for an evidentiary

1 The Court further finds that the petitioner is not entitled to the issuance of a  
2 certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2) because the  
3 dismissal of his petition for a writ of habeas corpus is justified by a plain  
4 procedural bar and jurists of reason would not find the procedural ruling  
5 debatable, and that the petitioner is not entitled to appeal *in forma pauperis*.  
6 pursuant to Fed.R.App.P. 24(a)(3)(A) because any such appeal would not be  
7 taken in good faith given the Court's stated reason for the dismissal of his  
8 petition.

9 Therefore,

10 IT IS ORDERED that the petitioner's [Motion for] Rule 8 Evidentiary  
11 Hearing (Doc. 21) is denied.

12 IT IS FURTHER ORDERED that the Magistrate Judge's Report and  
13 Recommendation (Doc. 20) is accepted and adopted by the Court.

14 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C.  
15 § 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied and  
16 that this action is dismissed with prejudice.

17 IT IS FURTHER ORDERED that no certificate of appealability shall issue  
18 and that the petitioner is not authorized to appeal *in forma pauperis*.

19 / / /

20 / / /

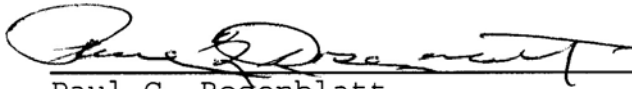
21 / / /

22 \_\_\_\_\_  
23 hearing (Doc. 21), and those are issues that the Court cannot decide due to the  
24 untimeliness of the petition.

25 Given that the petition is clearly time-barred, the Court does not believe  
26 that there is any reason to grant the petitioner's request, set forth in his  
objections, that the Court stay this matter until May, 2011 so that he may have  
time to consult with an attorney regarding all issues raised in this action.

1 IT IS FURTHER ORDERED that the Clerk of the Court shall enter  
2 judgment accordingly.

3 DATED this 6<sup>th</sup> day of December, 2010.

4  
5 

6 Paul G. Rosenblatt  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26