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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Steven James Eaton,

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No. CV-10-8134-PHX-GMS (DKD)

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Plaintiff,

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**ORDER**

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vs.

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Charles L. Ryan, et al.,

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Defendant.

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Pending before this Court is the Petition for Writ of Habeas Corpus, filed by Petitioner Steven James Eaton. (Doc. 1). On January 25, 2011, Magistrate Judge David K. Duncan issued a Report and Recommendation (“R & R”) in which he recommended that the Court deny the Petition and dismiss it with prejudice. (Doc. 10). Petitioner filed an objection to the R & R (Doc. 11). For the reasons stated herein, the Court accepts the R & R and denies the petition.

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On July 26, 2010, Petitioner timely filed a writ of habeas corpus, raising one claim for relief—that he was denied his right to appeal. (Doc. 1). In his R & R, Judge Duncan denied Petitioner’s claim for relief, providing the following two reasons: (1) that Petitioner had not adequately raised the constitutional claim in state court and (2) that his claim is procedurally defaulted for failure to “observe” state filing deadlines and he has failed to establish cause and actual prejudice to excuse the default. (Doc. 10). Petitioner timely filed an objection to Judge Duncan’s R & R, which is set forth in its entirety below:

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1        State v. Pruett 912 P.2d 1357 (1995) Holds people like me who plead guilty appeal  
by filing a Rule 32.

2        Mayers v. Arizona 908 P.2d 56 (1992) Holds prisoners file a pleading when they give  
this to prison officials.

3        Pruett states appeal is guaranteed by 14th Amendment. In my Petition for Review I  
made this argument. As such habeas relief should be granted.

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5 (Doc. 11).

6        Even if the Court accepts Petitioner’s argument that he “fairly presented” the federal  
7 claim to the state court, *see Duncan v. Henry*, 513 U.S. 364, 365 (1995), Eaton has not  
8 objected to Judge Duncan’s determination that his claim “is procedurally barred on  
9 independent and adequate state grounds” because he failed to timely file his notice of post-  
10 conviction relief and his petition for review. (Doc. 10).<sup>1</sup> When a claim is procedurally barred,  
11 a petitioner is required to demonstrate cause for the procedural default and actual prejudice.  
12 *Gray v. Netherland*, 518 U.S. 152, 162 (1996) (“[T]he procedural bar that gives rise to  
13 exhaustion provides an independent and adequate state-law ground for the conviction and  
14 sentence, and thus prevents federal habeas corpus review of the defaulted claim, unless the  
15 petitioner can demonstrate cause and prejudice for the default.”).

16        In the R & R, Judge Duncan concluded that Petitioner had not established cause and  
17 actual prejudice because Eaton’s explanation for the untimely filing was “that he delivered  
18 his notice to prison officials on February 9, more than eight months after sentencing, and  
19 therefore well past the 90-day deadline.” (Doc. 10). In other words, even if the prison

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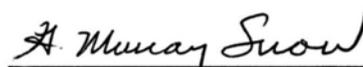
20  
21        <sup>1</sup> On June 2, 2009, the day the state court entered Petitioner’s sentence, Petitioner  
22 received a “Notice of Rights of Review After Conviction”, which clearly states that he was  
23 required to “file a Notice of Post-Conviction Relief (Form XXIV(c)) within 90 days of the  
24 entry of Judgment and Sentence.” (Doc. 8, Ex. F). On April 1, 2010, Petitioner filed a Motion  
25 to Vacate the court’s dismissal of his March 5, 2010 “Notice of Rule 32”. (*Id.*, Ex. I). In that  
26 Motion, Petitioner stated that he gave prison officials his original notice on February 9, 2009,  
27 several months before he was actually convicted. The superior court interpreted that  
28 statement to mean that he had submitted the notice to prison officials on February 9, 2010,  
and concluded that his notice was untimely. (*Id.*, Ex. J). Although in his “Petition for  
Review” filed in the Arizona Court of Appeals Petitioner asserted that he delivered his notice  
to prison officials within the 90 days of his sentencing (*id.*, Ex. K), Judge Duncan was  
persuaded that Eaton’s original assertion that he submitted the notice on February 9, 2010,  
was likely accurate. (Doc. 10). Petitioner did not object to Judge Duncan’s finding.

1 officials did in fact fail to deliver his notice, Eaton has not established cause because he did  
2 not provide that notice to the officials until approximately six months after the filing  
3 deadline. *See Murray v. Carrier*, 477 U.S. 478, 488 (1986) (Cause is established if a  
4 petitioner “can show that some objective factor external to the defense impeded counsel’s  
5 efforts to comply with the State’s procedural rule.”). The Court agrees. Furthermore,  
6 Petitioner has not objected to Judge Duncan’s determination that he failed to establish cause  
7 and prejudice for his procedural default, and therefore, the Court need not review Petitioner’s  
8 sole claim for relief.

9 **IT IS THEREFORE ORDERED:**

- 10 1. Magistrate Judge Duncan’s R & R (Doc. 10) is **ACCEPTED**.
- 11 2. Petitioner’s Petition for Writ of Habeas Corpus (Doc. 1) is **DISMISSED**.
- 12 3. The Clerk of the Court shall **TERMINATE** this action.
- 13 4. Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, in the event  
14 Petitioner files an appeal, the Court declines to issue a certificate of appealability because  
15 reasonable jurists would not find the Court’s procedural ruling debatable. *See Slack v.*  
16 *McDaniel*, 529 U.S. 473, 484 (2000).

17 DATED this 8th day of June, 2011.

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21 G. Murray Snow  
22 United States District Judge  
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