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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Judith M. Smith,

Petitioner,

vs.

Charles L. Ryan, et al.,

Respondents.

No. CV-12-08225-PCT-PGR (MEA)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Aspey notwithstanding that no one has filed any objections to the Report and Recommendation, the Court finds that the petitioner’s amended habeas corpus petition, filed pursuant to 28 U.S.C. § 2254, should be dismissed with prejudice as time-barred because this action was filed long 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, and the petitioner has not asserted that she is actually innocent.¹ Therefore,

¹

The petitioner filed her original, and unsigned, § 2254 petition on November 9, 2012, and she filed her amended § 2254 petition pursuant to court order on March 7, 2013 (which she signed on March 4, 2013.) While the Magistrate Judge and the respondents differ by some two months as to when the one-year

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

3 IT IS FURTHER ORDERED that the petitioner's [Amended] Petition Under 28
4 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Doc. 4)
5 is denied and that this action is dismissed with prejudice as time-barred.

6 IT IS FURTHER ORDERED that no certificate of appealability shall issue and
7 that the petitioner is denied leave to appeal *in forma pauperis* because the dismissal
8 of the petitioner's habeas petition is justified by a plain procedural bar and jurists of
9 reason would not find the procedural ruling debatable.

10 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
11 accordingly.

12 DATED this 18th day of November, 2013.

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15 Paul G. Rosenblatt
16 United States District Judge
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25 limitations period expired, the Court need not make that specific determination
26 because it is clear that under any proper calculation the petitioner filed this action
over five years after the expiration of the limitations period.