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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Matthew Trey Calhoun,  
Petitioner,  
vs.  
Charles L. Ryan, et al.  
Respondents.

No. CV-13-08009-PCT-NVW

**ORDER  
AND  
DENIAL OF CERTIFICATE OF  
APPEALABILITY AND IN FORMA  
PAUPERIS STATUS**

Pending before the court is the Report and Recommendation (“R&R”) of Magistrate Judge James F. Metcalf (Doc. 12) regarding petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be dismissed with prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at P. 9 Ln.22 (citing 28 U.S.C. § 636(b)). Respondents filed objections on July 2, 2013 (Doc. 13). Petitioner has filed no objections.

The court has considered Respondents’ objections and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). The court agrees with the Respondent’s Objections and sustains Respondents’ objections. *See* 28 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate”). The R&R erroneously concludes that Petitioner’s tile to file this petition was tolled for five days and expired on

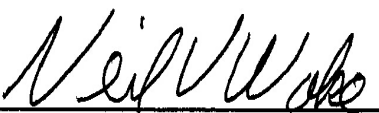
1 January 17, 2000. In truth, there was no tolling for five days, and the time expired on  
2 January 11, 2000. This error is of no consequence for the final conclusion and  
3 recommendation of the Magistrate Judge. The Magistrate Judge's determinations and  
4 recommendations are otherwise accepted within the meaning of Rule 72(b), Fed. R. Civ.  
5 P.

6 IT IS THEREFORE ORDERED that Report and Recommendation of the  
7 Magistrate Judge (Doc. 12) is modified to delete the sentence which reads: "Thus,  
8 Petitioner's statute of limitations was tolled for five days, extending his one year from  
9 January 11, 2000 through Monday, January 17, 2000." (Doc. 12 at 6, lns.11-13.) As thus  
10 modified, the R&R (Doc. 12) is accepted.

11 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment  
12 dismissing petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. §  
13 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

14 Having considered the issuance of a Certificate of Appealability from the order  
15 denying Petitioner's Petition for a Writ of Habeas Corpus, a Certificate of Appealability  
16 and leave to proceed in forma pauperis on appeal are **denied**.

17 Dated this 10th day of July, 2013.

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21 Neil V. Wake  
22 United States District Judge  
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