

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Donald Kevin Leacock,
10 Petitioner,

11 v.

12 Charles L Ryan, *et al.*,
13 Respondents.
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No. CV-16-08168-PCT-JJT (DMF)

ORDER

15 At issue are the Petition for Writ of Habeas Corpus filed by Donald Kevin
16 Leacock (“Petitioner”) on July 22, 2016 (Doc. 1), to which Charles Ryan and the Atty.
17 Gen. of the State of Arizona (“Respondents”) filed a Response (Doc. 9) and Petitioner
18 filed a Reply (Doc. 16); and the Report and Recommendation (“R&R”) prepared in this
19 matter by United States Magistrate Judge Deborah M. Fine (Doc. 17), which
20 recommends that this Court deny the Petition and dismiss it with prejudice.

21 The time for any party to file objections to the R&R ran as of November 30, 2016.
22 No party filed any objections, either as of that date or at any time thereafter. Such failure
23 to file objections to the R&R is considered a waiver of a party’s right to *de novo*
24 consideration of the issues. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
25 2003) (*en banc*). It also constitutes a waiver of a party’s right to appellate review of the
26 findings of fact in an order or judgment entered pursuant to the R&R. *See Robbins v.*
27 *Carey*, 481 F.3rd 1143, 1146-47 (9th Cir. 2007). Nonetheless, this Court has undertaken
28 *de novo* review of the issues presented in the Petition and associated briefing. Upon that

1 review, the Court concludes that Magistrate Judge Fine's recommendations are wholly
2 sound. The Court adopts in whole Judge Fine's R&R and the underlying reasoning. The
3 Court expressly finds that under AEDPA, limitations period, Petitioner's Petition was due
4 no later than October 23, 2010, his filing of successive PCR petitions after his first PCR
5 review process became final were all untimely and did not reset the clock for the
6 limitations period or otherwise operate as statutory tolling under AEDPA; and Petitioner
7 provided no justification for equitable tolling. Moreover, for the reasons exhaustively
8 stated and analyzed in Judge Fine's R&R, Petitioner does not qualify for consideration
9 under the *Schlup* gateway. For all of those reasons, the Court will deny the Petition and
10 dismiss it with prejudice.

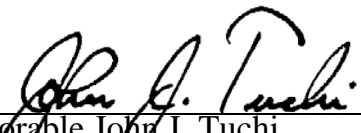
11 IT IS ORDERED adopting the R&R (Doc. 17) in whole.

12 IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus
13 (Doc. 1).

14 IT IS FURTHER ORDERED denying a Certificate of Appealability upon the
15 Court's conclusion that jurists of reason would not find its assessment of the
16 constitutional claims to be debatable or wrong. The Clerk of Court shall close this matter.

17 Dated this 14th day of February, 2017.

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Honorable John J. Tuchi
United States District Judge