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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Earl Felton Crago, Jr.,)	No. CV 05-772-TUC-FRZ (GEE)
Petitioner,)	ORDER
vs.)	
Dora B. Schriro; et al.,)	
Respondents.)	

Before the Court for consideration is Petitioner’s *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody, pursuant to Title 28, U.S.C. § 2254, alleging violations of Petitioner’s Fifth and Fourteenth Amendment rights to due process and Sixth Amendment right to a fair trial.

This matter was referred to the United States Magistrate Judge for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2, Rules of Practice of the United States District Court for the District of Arizona.

Magistrate Judge Glenda E. Edmonds issued her Report and Recommendation, filed May 5, 2008, recommending that the District Court, after its independent review of the record, dismiss this action in its entirety, as time barred.

The Report and Recommendation provides an in-depth analysis and thorough discussion of the facts and issues and matters presented. Also set forth in detail by the

1 Magistrate Judge is the procedural and factual history of the underlying state court criminal
2 action.

3 Magistrate Judge Edmonds issued her recommendation based on the finding that
4 Petitioner's third state petition for post-conviction relief did not fall within the gateway
5 exceptions outlined under Ariz. R.Crim.P. 32.1, and therefore, was untimely and not properly
6 filed for purposes of tolling the statutory limitations period of one year, imposed by the
7 Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), under the relevant
8 provisions of 28 U.S.C. § 2244(d).

9 "Petitioner's Objections to Magistrate Judge's Report and Recommendation Pursuant
10 to 28 U.S.C. § 636(b)" was filed May 16, 2008, arguing that the Magistrate Judge's ruling
11 is contrary to the record of facts and that his third petition was "properly filed" to satisfy the
12 statutory time requirements under the AEDPA.

13 The Court, having made an independent review of the record herein, including
14 Petitioner's objections, finds that the Report and Recommendation of Magistrate Judge
15 Edmonds shall be adopted as the findings of fact and conclusions of law of this Court.

16 Based on the foregoing,

17 **IT IS ORDERED** that the Report and Recommendation [Doc. #34] of Magistrate
18 Judge Edmonds is hereby **ACCEPTED** and **ADOPTED** as the findings of fact and
19 conclusions of law by this Court;

20 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus is
21 **DENIED** and that this action is hereby dismissed with prejudice. Judgment shall issue
22 accordingly.

23
24 DATED this 30th day of December, 2008.

25
26 
27 FRANK R. ZAPATA
28 United States District Judge