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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

|                          |   |                             |
|--------------------------|---|-----------------------------|
| Rodrck Wade High-Elk,    | ) | No. CV 11-364-TUC-FRZ (GEE) |
| Petitioner,              | ) | <b>ORDER</b>                |
| vs.                      | ) |                             |
| Charles L. Ryan; et al., | ) |                             |
| Respondents.             | ) |                             |

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Before the Court for consideration is the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner Rodrick Wade High-Elk, and the Report and Recommendation of the Magistrate Judge, recommending the dismissal of the Petition. Respondents filed an Answer replete with exhibits of the state court proceedings. Petitioner filed a reply.

Petitioner was convicted in Pima County Superior Court of three counts of aggravated assault with a deadly weapon or dangerous instrument and one count each of driving under the influence, aggravated driving with an alcohol concentration of .08 or higher, and fleeing from a law enforcement vehicle. He was sentenced to concurrent sentences, the longest of which were 15.75 years of imprisonment.

Petitioner raises four grounds for relief alleging (I) he was denied a fair trial because prosecution witnesses improperly testified to prior bad acts; (II) ineffective assistance of counsel; (III) the trial court error in sentencing; and (IV) insufficient evidence to support the assault convictions

1 This matter was referred to Magistrate Judge Glenda E. Edmonds, pursuant to the  
2 provisions of 28 U.S.C. § 636(b), Rule 72, Fed.R.Civ.P., and Local Rules 72.1 and 72.2 of  
3 the Rules of Practice of the United States District Court for the District of Arizona, for  
4 further proceedings and report and recommendation.

5 Magistrate Judge Edmonds issued her Report and Recommendation, recommending  
6 that the Court enter an order dismissing the Petition for Writ of Habeas based on findings that  
7 the Petition is time-barred by the one-year statutory limitation period. 28 U.S.C. § 2244(d).

8 The Report and Recommendation, filed January 31, 2012, sets forth the factual  
9 background and a thorough procedural history of Petitioner's state court proceedings and  
10 conviction at issue, detailing the time periods in regard to Petitioner's state post-conviction  
11 proceedings, accurately finding that the limitation period for filing a federal habeas petition  
12 expired on February 18, 2011. The present Petition was signed by the Petitioner on June 15,  
13 2011 and untimely filed on June 20, 2011, 122 days beyond the statutory deadline for filing.

14 Petitioner filed a Notice of Filing on February 7, 2012 and an "(Amended) Reply to  
15 Petition for Writ of Habeas Corpus" on February 9, 2012; however no objections to the  
16 Report and Recommendation pursuant to 28 U.S.C. §636(b) were filed.

17 The Court finds, after consideration of the matters presented and an independent  
18 review of the record herein, that the Report and Recommendation shall be adopted and the  
19 Petition denied in accordance with the recommendations and findings set forth therein.

20 Based on the foregoing,

21 IT IS ORDERED that Magistrate Judge Edmond's Report and Recommendation [Doc.  
22 17] is hereby ACCEPTED AND ADOPTED as the findings of fact and conclusions of law  
23 by this Court;

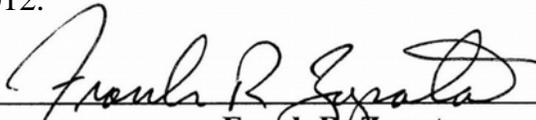
24 IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus is DENIED  
25 and this action is hereby DISMISSED;

26 IT IS FURTHER ORDERED that Petitioner's Motion for Discovery (Doc. 12);  
27 Motion for Leave to File Amended Reply to Petition and for Writ of Habeas Corpus (Doc.  
28 15) and Motion to Request ... Disclosure and Discovery (Doc. 16) are DENIED as moot;

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IT IS FURTHER ORDERED that judgment be entered accordingly.

DATED this 9<sup>th</sup> day of August, 2012.

  
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**Frank R. Zapata**  
**Senior United States District Judge**