

1

2

3

4

5

6

**IN THE UNITED STATES DISTRICT COURT**

7

**FOR THE DISTRICT OF ARIZONA**

8

9

Daniel Merced Flores,

10

Petitioner,

No. CV-11-660-TUC-FRZ (LAB)

11

vs.

12

**ORDER**

13

Charles Ryan, et al.,

14

Respondent.

15

16

Before the Court for consideration is the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Petitioner Daniel Merced Flores, *pro se*, and the Report and Recommendation of the Magistrate Judge, who has recommended dismissal.

17

18

19

The Petitioner was convicted after a jury trial of first-degree murder, conspiracy to commit first-degree murder, and kidnaping. The trial court sentenced the Petitioner to concurrent sentences of natural life, life with parole eligibility after 25 years, and 10.5 years imprisonment, respectively.

20

21

22

The Petition for Habeas Corpus argues that ineffective counsel during his plea negotiations, for failure to properly explain that he was facing a sentence of natural life if he lost at trial, as his single ground for relief.

23

24

25

This matter was referred to Magistrate Judge Leslie A. Bowman, pursuant to the provisions of 28 U.S.C. § 636(b), Rule 72, Fed.R.Civ.P., and Local Rules 72.1 and 72.2 of the Rules of Practice of the United States District Court of the District of Arizona, for further proceedings and Report and Recommendation.

26

27

28

Magistrate Judge Bowman issued her Report and Recommendation, recommending the Court

1 deny the Petition for Writ of Habeas Corpus. This recommendation is based on the finding that the  
2 Petition is time barred. The Magistrate Judge also recommends that the Petitioner is not entitled to  
3 equitable tolling of the limitation period. This recommendation is based on the finding that the  
4 Petitioner has no explanation as to why he is entitled to equitable tolling.

5 The Report and Recommendation issued by Magistrate Judge Bowman sets forth the factual  
6 and procedural history of the Petitioner's state court proceedings and convictions at issue as well  
7 as provides a thorough analysis of the claims and legal standards at issue.

8 The Petitioner filed an Objection to the Report and Recommendation that was issued by  
9 Magistrate Judge Bowman pursuant to 28 U.S.C. § 636(b), challenging the substantive and  
10 procedural findings set forth therein.

11 This Court finds, after consideration of all the matters presented and an independent review  
12 of the record which included the entire three week trial transcript, that the Petition for a Writ of  
13 Habeas Corpus be denied and this action be dismissed in accordance with the Report and  
14 Recommendation set forth therein.

15 The Court will issue a Certificate of Appealability. The Court "may issue a COA for any  
16 issue with respect to which petitioner makes a "substantial showing of the denial of a constitutional  
17 right." *Jennings v. Woodford*, 290 F.3d. 1006, 1010 (9<sup>th</sup> Cir. 2002)(citing 28 U.S.C. § 2253(c)(2)).  
18 The standard "permits appeal where petitioner can "demonstrate that the issues are debatable among  
19 jurists of reason; that a court could resolve the issues [differently]; or that the questions are adequate  
20 to deserve encouragement to proceed further." *Id.* (Citing *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4,  
21 103 S.Ct. 3383, 77 L.Ed.2d. 1090 (1983)). The Court finds that the issues presented advance the  
22 requisite showing for a COA to issue.

23 **IT IS HEREBY ORDERED** that the Report and Recommendation [Doc. 21] is hereby  
24 **ACCEPTED AND ADOPTED** as the findings of fact and conclusions of law by this Court;

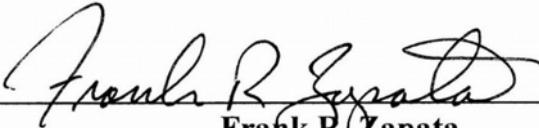
25 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus is **DENIED** and  
26 **this action is hereby DISMISSED;**

27 **IT IS FURTHER ORDERED** that a Certificate of Appealability shall issue;

28 **IT IS FURTHER ORDERED** that judgment be entered accordingly.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED this 10<sup>th</sup> day of April, 2014.

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