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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Eva Lynn Mayfield,)	No. CIV 13-946-TUC-DCB (LAB)
Petitioner,)	REPORT AND RECOMMENDATION
vs.)	
Charles L. Ryan; et al.,)	
Respondents.)	

Pending before the court is an amended petition for writ of habeas corpus filed on December 27, 2013, by Eva Lynn Mayfield, an inmate confined in the Arizona State Prison Complex in Goodyear, Arizona. (Doc. 9)

Pursuant to the Rules of Practice of this court, this matter was referred to Magistrate Judge Bowman for report and recommendation. LRCiv 72.2(a)(2).

The Magistrate Judge recommends the District Court, after its independent review of the record, enter an order dismissing the petition. It is time-barred.

Summary of the Case

Mayfield was convicted after a jury trial of “first-degree murder, first-degree burglary, three counts of aggravated assault, and four counts of kidnapping.” (Doc. 16-2, p. 48) The trial court sentenced Mayfield to “prison terms totaling natural life plus forty-two years.” *Id.*, p. 49

On direct appeal, Mayfield challenged “the trial court’s denial of her motion to suppress evidence, its denial of her motion for a judgment of acquittal, its refusal to admit medical

1 records, its admission of other act evidence, and its refusal to admit a witness's written plea
2 agreement." *Id.*

3 The Arizona Court of Appeals affirmed Mayfield's convictions and sentences on
4 November 14, 2005. (Doc. 16-2, p. 48) The Arizona Supreme Court denied Mayfield's petition
5 for review on May 23, 2006. (Doc. 16-3, p. 14) It does not appear that Mayfield filed a petition
6 for review with the U.S. Supreme Court.

7 On July 6, 2006, Mayfield filed notice of post-conviction relief. (Doc. 16-3, p. 19)
8 Appointed counsel was unable to find any meritorious issues, so the court gave Mayfield an
9 opportunity to file a petition pro se. (Doc. 16-3, pp. 25-28) When Mayfield failed to file a
10 timely petition, the trial court dismissed the post-conviction relief proceedings on March 21,
11 2007. (Doc. 16-3, p. 37)

12 Over four years later, on September 8, 2011, Mayfield filed a second notice of post-
13 conviction relief. (Doc. 16-3, p. 40) The trial court denied Mayfield's petition on September
14 28, 2012, holding that her claim of ineffective assistance of trial counsel was waived and, in the
15 alternative, meritless. (Doc. 16-4, pp. 2-8)

16 On December 24, 2012, Mayfield filed a third notice of post-conviction relief arguing
17 her post-conviction relief attorney was ineffective for failing to argue that a witness, previously
18 unavailable, has been found and she is entitled to relief pursuant to *Martinez v. Ryan*. (Doc. 16-
19 4, p. 10, pp. 17-18) The trial court dismissed the notice on February 4, 2013. (Doc. 16-4, p. 17)
20 The Arizona Court of Appeals granted review but denied relief on May 22, 2013. (Doc. 16-4,
21 p. 28)

22 On August 15, 2013, Mayfield filed in this court a petition for writ of habeas corpus
23 pursuant to 28 U.S.C. § 2254. (Doc. 1) She filed the pending amended petition on December
24 27, 2013. (Doc. 9) She claims (1) she was arrested without a warrant, (2) her medical records
25 should have been admitted at trial, (3) trial counsel was ineffective for agreeing to consolidate
26 two cases against her, and (4) the evidence was insufficient to support her conviction for felony
27 murder. (Doc. 9)

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1 On July 10, 2013, the respondents filed an answer arguing among other things that the
2 petition is time-barred. (Doc. 16) Mayfield did not file a reply. The respondents are correct.
3 The petition is time-barred.

4
5 Discussion

6 The writ of habeas corpus affords relief to persons in custody in violation of the
7 Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). The petition,
8 however, must be filed within the applicable statute of limitations or it will be dismissed. The
9 statute of limitations reads in pertinent part as follows:

10 (1) A 1-year period of limitation shall apply to an application for a writ of
11 habeas corpus by a person in custody pursuant to the judgment of a State
12 court. The limitation period shall run from the latest of--

13 (A) the date on which the judgment became final by the conclusion of
14 direct review or the expiration of the time for seeking such review;

15 * * *

16 (2) The time during which a properly filed application for State
17 post-conviction or other collateral review with respect to the pertinent
18 judgment or claim is pending shall not be counted toward any period of
19 limitation under this subsection.

20 28 U.S.C. §§ 2244(d). The “one-year statute of limitations . . . applies to each claim in a habeas
21 application on an individual basis.” *Mardesich v. Cate*, 668 F.3d 1164, 1170 (9th Cir. 2012).

22 The limitation period for each of Mayfield’s claims was triggered on “the date on which
23 the judgment became final by the conclusion of direct review or the expiration of the time for
24 seeking such review.” 28 U.S.C. § 2244(d)(1)(A).

25 The Arizona Court of Appeals affirmed Mayfield’s convictions and sentences on
26 November 14, 2005. (Doc. 16-2, p. 48) The Arizona Supreme Court denied Mayfield’s petition
27 for review on May 23, 2006. (Doc. 16-3, p. 14) Mayfield then had 90 days to petition the U.S.
28 Supreme Court for review. Sup. Ct. R. 13. When she did not do so, her judgment became final.
See Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999).

The one-year limitation period did not begin to run immediately because Mayfield was
pursuing post-conviction relief. *See* 28 U.S.C. § 2244(d)(2). Tolling pursuant to § 2244(d)(2)

