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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Fernando R. Molina,

10 Petitioner,

11 v.

12 Charles L. Ryan, et al.,

13 Respondents.
14

No. CV-14-02246-TUC-DTF

ORDER

15
16 Fernando Molina has filed a Petition for Writ of Habeas Corpus brought pursuant
17 to 28 U.S.C. § 2254. Pending before the Court is the Petition (Doc. 1) and Respondents'
18 Answer to Petition (Doc. 15). The parties consented to exercise of jurisdiction by a
19 Magistrate Judge, pursuant to 28 U.S.C. § 636(c)(1). (Doc. 18.) The Court finds that the
20 Petition should be dismissed on the ground that it is time-barred.

21 **FACTUAL AND PROCEDURAL BACKGROUND**

22 On November 15, 2010, Molina was convicted of two counts of aggravated assault
23 with a deadly weapon and one count of aggravated assault against a minor under fifteen.
24 He was sentenced to concurrent terms, the longest of which was twenty-one years. (Doc.
25 1 at 2; Doc. 15, Ex. A at 2, 3.) Molina filed a direct appeal, which was denied on August
26 19, 2011. (Doc. 15, Ex. A.) His petition for review to the Arizona Supreme Court was
27 denied on January 10, 2012. (*Id.*, Ex. B.)
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1 United States Supreme Court expired ninety days later, on April 9, 2012. Sup. Ct. R. 13.
2 Thus, the judgment against Molina became final on that date. *See Bowen v. Roe*, 188 F.3d
3 1157, 1159 (9th Cir. 1999) (holding that “direct review” includes the period during which
4 a petitioner can petition for writ of certiorari, regardless of whether the petitioner seeks
5 such review); *see also Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009) (finding direct
6 review to include the time up to the expiration of the period to seek review by the
7 Supreme Court).

8 The statute of limitations is tolled during the time a properly filed state PCR
9 application is pending. 28 U.S.C. § 2244(d)(2). Molina already had pending a PCR
10 proceeding at the time his judgment became final, therefore, the statute of limitations was
11 immediately statutorily tolled on April 10, 2012. *Cf. Isley v. Ariz. Dep’t of Corrections*,
12 383 F.3d 1054, 1056 (9th Cir. 2004) (finding that tolling period begins with filing of
13 notice pursuant to Arizona Rule of Criminal Procedure 32.4(a)). This PCR proceeding
14 was dismissed by the trial court on October 9, 2012, and, with no pending proceedings
15 before any state court, the statute of limitations began to run the following day, on
16 October 10, 2012.

17 The AEDPA statute of limitations expired one year later on October 9, 2013.
18 Because Petitioner did not file his habeas Petition until July 25, 2014, the one-year statute
19 of limitation already had run.

20 Petitioner raised no argument for equitable tolling in the Petition and he did not
21 file a Reply.¹ The Court can find no obvious basis for the untimeliness of this filing. The
22 Petition is statutorily time-barred.

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27 ¹ The Court-approved § 2254 form petition sets forth 17 questions. Question 16 asks
28 the petitioner to discuss the timeliness of the petition in light of § 2244(d). Molina’s
counsel followed the format of the Court’s form, however, he included only the first 15
questions in Molina’s Petition. (Doc. 1 at 13.)

