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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Carl Ray Buske,  
  Petitioner,  
  
v.  
  
Charles L Ryan, et al.,  
  Respondents.

No. CV-15-00098-TUC-RCC  
  
**ORDER**

Pending before the Court is Petitioner Carl Ray Buske’s Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1), Magistrate Judge Charles Pyle’s Report and Recommendation (“R & R”) (Doc. 9) and Petitioner’s objections to the R & R (Doc. 10). For the following reasons, this Court shall overrule Petitioner’s objections, accept and adopt the R & R and deny Sartin’s petition.

**Discussion**

The duties of the district court in connection with a R & R are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1).

Where the parties object to an R & R, “[a] judge of the [district] court shall make a de novo determination of those portions of the [R & R] to which objection is made.” 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). When no objection

1 is filed, the district court need not review the R & R de novo. *Wang v. Masaitis*, 416 F.3d  
2 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22  
3 (9th Cir. 2003) (en banc). The Court will not disturb a magistrate judge’s order unless his  
4 factual findings are clearly erroneous or his legal conclusions are contrary to law. 28  
5 U.S.C. § 636(b)(1)(A). “[T]he magistrate judge’s decision...is entitled to great deference  
6 by the district court.” *United States v. Abonce-Barrera*, 257 F.3d 959, 969 (9th Cir.  
7 2001). A failure to raise an objection waives all objections to the magistrate judge’s  
8 findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998). A failure to object  
9 to a Magistrate Judge’s conclusion “is a factor to be weighed in considering the propriety  
10 of finding waiver of an issue on appeal.” *Id.* (internal citations omitted).

11 In his objections, Buske concedes that his petition is untimely but seeks equitable  
12 tolling because the representation his attorney provided on direct appeal fell below an  
13 objective standard of reasonableness. Petitioner is incorrect. A petitioner is entitled to  
14 equitable tolling of the limitations period “only if he shows (1) that he has been pursuing  
15 his rights diligently, and (2) that some extraordinary circumstance stood in his way and  
16 prevented timely filing.” *Lahey v. Hickman*, 633 F.3d 782, 786 (9th. Cir. 2011). “The  
17 high threshold of extraordinary circumstances is necessary lest the exceptions swallow  
18 the rule.” *Id.* Petitioner bears the burden of showing “extraordinary circumstances were  
19 the cause of his untimeliness.” *Spitsyn v. Moore*, 345 F.3d 796, 799 (9th Cir. 2003)  
20 (internal quotation and citation omitted).

21 Here, Buske restates his argument that his counsel during the direct appeal  
22 provided misrepresentations and that but for these misrepresentations Buske would have  
23 timely filed his federal habeas petition rather than a fourth petition in state court.  
24 However, Magistrate Judge Pyle’s R & R sufficiently discusses why the alleged  
25 misrepresentations neither constitutes an extraordinary circumstance nor tolls the  
26 AEDPA time limitations. Because Buske’s petition was untimely and is ineligible for  
27 either statutory or equitable tolling, this Court shall deny the petition.

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Accordingly,

**IT IS HEREBY ORDERED** that Magistrate Judge Charles Pyle’s Report and Recommendation (“R & R”) (Doc. 9) is **accepted and adopted**.

**IT IS FURTHER ORDERED** that Petitioner Carl Ray Buske’s Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **denied**.

**IT IS FURTHER ORDERED** that the Clerk of Court is directed to close the case.

Dated this 5th day of April, 2017.



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Raner C. Collins  
Chief United States District Judge