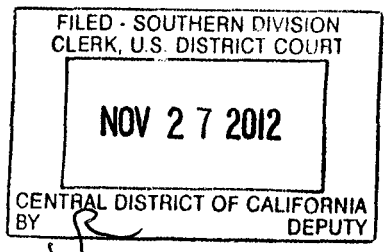


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I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL *Petitioner*
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
RECORD IN THIS ACTION ON THIS DATE.

DATED: 11-27-12
[Signature]
DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BILLY JOE SPENCER,) Case No. CV 12-6631-R (JPR)
)
) Petitioner,)
)
 vs.) ORDER ACCEPTING FINDINGS AND
) RECOMMENDATIONS OF U.S.
) MAGISTRATE JUDGE
 P.D. BRAZELTON, Warden,)
)
) Respondent.)
)
)

Pursuant to 28 U.S.C. § 636, the Court has reviewed de novo the Petition, records on file, and Report and Recommendation of the U.S. Magistrate Judge. On November 7, 2012, Petitioner filed Objections to the Report and Recommendation, which recommended that the Petition be dismissed as time barred. Petitioner claims that his initial state supreme court habeas petition was "properly filed" in that court, despite its rejection of it, because he in fact filed two separate copies of his petition, in separate envelopes, only one of which had the wrong caption. (Objections at 2-3.) Petitioner asserts that the proof of service he attached to his August 29, 2012 reply to the Court's

1 Order to Show Cause supports his claim.¹ (Id.)

2 Petitioner's objections are unavailing for two reasons.
3 First, assuming the proof of service is what it purports to be,
4 it shows only that Petitioner mailed two separate copies of the
5 state petition to the supreme court; it in no way demonstrates
6 that one of them was properly captioned. (See Aug. 29, 2012
7 Reply at Ex. A (proof of service stating that Petitioner served
8 "two writs of habeas corpus in separate envelopes".) Second,
9 the state court rejected the petition for filing not only because
10 it contained the wrong caption but because Petitioner did not
11 submit a sufficient number of copies. (See id. at Ex. B.) Thus,
12 even if the state court erred in its finding that the petition
13 was improperly captioned, Petitioner has presented no evidence or
14 argument that it was wrong to reject the petition because
15 Petitioner had provided an inadequate number of copies of it.

16 For all these reasons, the Court accepts the findings and
17 recommendations of the Magistrate Judge and finds that the
18 Petition is untimely under 28 U.S.C. § 2244(d).

19 IT THEREFORE IS ORDERED that (1) the Petition is denied
20 without leave to amend and (2) Judgment be entered dismissing
21 this action with prejudice.

22 DATED: Nov. 27, 2012



23 MANUEL REAL
24 U.S. DISTRICT JUDGE

25 ¹ Petitioner complains that the Court never returned a
26 conformed, file-stamped copy of his reply to him. (Objections at
27 3.) The Court's internal docketing system shows otherwise. If
28 Petitioner never received the copy that the Court mailed to him,
he may request another as long as he provides a copy of the
prison's mail log indicating that he received no mail from the
Court during the month of September 2012.