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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONICIO AYON,

Petitioner,

No. CIV S-09-2522 JAM EFB P

vs.

JOHN HAVILAND, Warden,

Respondent.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent moves to dismiss on the grounds that his petition is untimely, as it was filed outside of the one-year statute of limitations. Dckt. No. 14. Petitioner has filed a statement of non-opposition to the motion, stating that he does not oppose “respondent’s motion to dismiss as untimely in every aspect mentioned in the notice and motion to dismiss.” Dckt. No. 16.

Accordingly, it is hereby RECOMMENDED that:

1. Respondent’s motion to dismiss be granted, and this action be dismissed without prejudice; and

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2. The Clerk be directed to close the case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: February 7, 2011.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE