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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TYSHON MAIKE HARMON,  
Petitioner,  
v.  
M. EVANS, Warden,  
Respondent.

Civil No. 07CV1648 JAH(BLM)  
**ORDER DENYING REQUEST FOR  
CERTIFICATE OF APPEALABILITY**

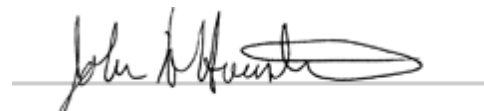
Petitioner, a state prisoner appearing *pro se*, filed petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, on August 20, 2007, challenging his conviction in state court. The matter was referred to Honorable Barbara Lynn Major, United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)B) and Local Rule HC.2(a). On November 2, 2007, Respondent filed a motion to dismiss the petition as barred by the statute of limitations. Magistrate Judge Major filed a Report and Recommendation (“Report”) on February 20, 2008, advising this Court to dismiss the petition. Judge Major found the petition, which was filed more than nine years after the limitation period expired, was untimely and Petitioner was not entitled to statutory or equitable tolling. On April 2, 2008, Petitioner filed objections to the magistrates judge’s findings that equitable tolling was not warranted and Petitioner was not entitled to discovery or an evidentiary hearing. The Court overruled Petitioner’s objections, adopted the Report in its entirety and dismissed the petition.

On September 4, 2008, Petitioner filed a notice of appeal which included a request

1 for a certificate of appealability. See Doc. No. 16. A certificate of appealability is  
2 authorized “if the applicant has made a substantial showing of the denial of a  
3 constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this threshold showing, a  
4 petitioner must show : (1) the issues are debatable among jurists of reason; or (2) that a  
5 court could resolve the issues in a different manner; or (3) that the questions are adequate  
6 to deserve encouragement to proceed further. Lambright v. Stewart, 220 F.3d 1022,  
7 1024-25 (9<sup>th</sup> Cir. 2000)(citing Slack v. McDaniel, 529 U.S. 473 (2000) and Barefoot v.  
8 Estelle, 463 U.S. 880 (1983)).

9 Here, Petitioner appeals this Court’s order and judgment dismissing the petition for  
10 writ of habeas corpus. In overruling Petitioner’s objections and dismissing the petition,  
11 this Court agreed with the magistrate judge’s determination that Petitioner presented  
12 insufficient evidence to support his claim of mental illness, and failed to show a causal  
13 connection between his asserted infirmities and his failure to timely file his habeas corpus  
14 petition, and therefore, he was not entitled to equitable tolling. See Doc. No. 14 at. 6.  
15 The Court further found Petitioner was not entitled to discovery or an evidentiary hearing,  
16 because Petitioner failed to allege facts, if proven, would demonstrate his incompetence  
17 prevented him from filing a timely petition, thereby failing to demonstrate good cause.  
18 This Court finds that a certificate of appealability is not warranted in this instance because  
19 the dismissal of the petition under the circumstances here is not an issue debatable among  
20 jurists of reason nor could any other court resolve the issue in a different manner.  
21 Lambright, 220 F.3d at 1024-25. Accordingly, this Court **DENIES** Petitioner’s motion  
22 for a certificate of appealability.

23 DATED: September 11, 2008

24   
25 JOHN A. HOUSTON  
26 United States District Judge  
27  
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