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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FELIX CAMACHO,

Petitioner,

vs.

ROBERT HERNANDEZ, Warden,

Respondent.

Case No. 08cv0016 BEN (LSP)

ORDER

**(1) ADOPTING REPORT AND
RECOMMENDATION OVER
OBJECTIONS; AND**

**(2) DISMISSING PETITION FOR A
WRIT OF *HABEAS CORPUS***

Petitioner Felix Camacho, a *pro se* inmate at the Richard J. Donovan Correctional Facility (the "Facility"), petitioned for a writ of *habeas corpus* under 28 U.S.C. § 2254, challenging his conviction in California state court for kidnaping and inflicting corporal injury on a cohabitant. Respondent Robert Hernandez, the Facility's warden, moved to dismiss the Petition as untimely, arguing that Camacho filed the Petition over eight months after the expiration of the one-year limitations period provided by the Antiterrorism and Effective Death Penalty Act (the "AEDPA"). Camacho filed no opposition. After carefully considering the motion, Magistrate Judge Leo S. Papas issued a well-reasoned Report and Recommendation recommending that the Petition be dismissed. Dkt. No. 14 at 9-10. Camacho objected to the Report and Recommendation on the sole basis that he never received the motion to dismiss. Dkt. No. 17. In response, Hernandez lodged the Facility's legal mail log demonstrating that his motion papers were served on Camacho. Dkt. No. 19. For the reasons set forth below, the Report and Recommendation is adopted.

1 Under 28 U.S.C. § 636, this Court “shall make a *de novo* determination of those portions of
2 the [magistrate judge’s] report . . . or recommendations to which objection is made.” 28 U.S.C. §
3 636(b)(1)(C); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*).
4 Here, because Camacho has filed objections, the Court reviews the Report and Recommendation *de*
5 *novo*.

6 The Court’s review reveals that Magistrate Judge Papas thoughtfully and thoroughly analyzed
7 the law and facts relating to the statute of limitations issue. Based state court documents, he found that
8 absent statutory or equitable tolling, the AEDPA’s limitations period for Camacho to seek federal
9 *habeas* relief expired on September 22, 2005 – over two years before he filed the present Petition on
10 December 30, 2007. Dkt. No. 14 at 5. After discussing case law and Camacho’s state *habeas*
11 petitions, Magistrate Judge Papas concluded that statutory tolling could not lift the bar for the
12 limitations period. *Id.* at 8-9. No extraordinary circumstances existed to justify equitable tolling. *Id.*
13 Accordingly, Magistrate Judge Papas correctly determined that Camacho’s Petition was untimely.

14 In his Objections to the Report and Recommendation, Camacho fails to address the statute of
15 limitations issue. He does not dispute the accuracy of the statutory tolling calculation. Nor does he
16 submit any facts to demonstrate extraordinary circumstances that may give rise to an equitable tolling
17 claim. Instead, he asserts that the Report and Recommendation should be rejected on the basis that
18 he never received a copy of Hernandez’s motion to dismiss. Dkt. No. 17 at 1. Contrary to his
19 conclusory, self-serving assertion, however, the Facility’s legal mail log shows that on April 8, 2008
20 – four days after the motion to dismiss was mailed (*see* Dkt. No. 12 at 16) – Camacho received legal
21 mail from Hernandez’s counsel, the California Attorney General’s Office located in San Diego,
22 California. Dkt. No. 18 Ex. 14 at 2. Moreover, even if Camacho did not receive the motion papers,
23 he could have objected to the Report and Recommendation on the merits. But he chose not to do so.
24 Because the Objections do not provide any legal or factual basis to challenge the Report and
25 Recommendation, the Court agrees with Magistrate Judge Papas’ recommendation that the Petition
26 be dismissed as untimely.

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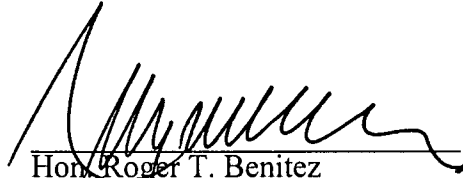
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Accordingly, the Court overrules the Objections and adopts the Report and Recommendation.

The Petition is dismissed. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: January 23, 2009


Hon. Roger T. Benitez
United States District Judge