

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

PAMELA J. BAKER,

v.

TINA HORNBEAK, Warden,

Petitioner,

Respondent.

CASE NO. 09cv1025 BTM(AJB)

**ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING
PETITION, AND DENYING
CERTIFICATE OF APPEALABILITY**

Pamela J. Baker has filed a Petition for a Writ of Habeas Corpus challenging her state conviction and sentence. On November 18, 2009, Magistrate Judge Battaglia filed a Report and Recommendation that the Petition be dismissed because it was filed after the expiration of the one-year statute of limitations and it contains unexhausted claims. Baker did not file any objections to the Report and Recommendation but did file a motion on December 7, 2009, seeking to stay the Petition so she could exhaust her claims.

The Court has conducted a de novo review of the Report and Recommendation and the relevant record and concludes that the Report and Recommendation properly applies the law to the record. Therefore, the Court **ADOPTS** the Report and Recommendation in so far as it recommends dismissal based on the statute of limitations. The Court **ORDERS** as follows:

- (1) The Petition for Writ of Habeas Corpus shall be **DISMISSED** with prejudice as filed beyond the one-year statute of limitations in 28 U.S.C. § 2244(d);

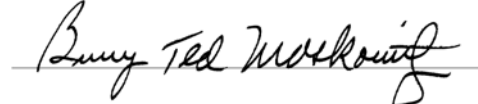
1 (2) The motion for a stay captioned as "Motion Requesting a Protective Petition" [Doc.
2 No. 18] is **DENIED** as moot;

3 (3) The Court **DENIES** a Certificate of Appealability.

4 The Clerk shall enter a final judgment accordingly.

5 **IT IS SO ORDERED.**

6 DATED: January 27, 2010
7

8 
9 Honorable Barry Ted Moskowitz
United States District Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28