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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CESAR A. RODRIGUEZ,

Plaintiff,

v.

S. HATTON, Warden,

Respondent.

Case No.: 16cv2803-JAH (BLM)

ORDER ADOPTING REPORT AND
RECOMMENDATION [Doc. No. 11]
AND GRANTING RESPONDENT'S
MOTION TO DISMISS PETITION FOR
WRIT OF HABEAS CORPUS [Doc. No.
6]

BACKGROUND

Petitioner, Cesar A. Rodriguez, a state prisoner proceeding pro se, originally filed his federal Petition for Writ of Habeas Corpus on November 3, 2016 pursuant to 28 U.S.C. § 2254. Doc. No. 1. In his Petition, Rodriguez alleges that he was deprived of his due process rights under Johnson v. United States, 135 S.Ct. 2551 (2015). Id. Specifically, Petitioner argues: (1) Criminal statutes that do not give someone the opportunity to know what the governing law is are unconstitutionally vague; (2) California's second degree murder statute is unconstitutional and void for vagueness

1 under Johnson; and (3) the California Board of Parole Hearings' thirty-year application of
2 California Penal Code §3041 (a)-(b) is arbitrary and made those provisions
3 unconstitutionally vague under Johnson. Id. at pgs. 6-8.

4 On January 26, 2017, Respondent filed a motion to dismiss the Petition for Writ of
5 Habeas Corpus. Doc. No. 6. Respondent argues the petition must be barred by the
6 statute of limitations and dismissed with prejudice. Id. at pg. 3. Specifically, Respondent
7 contends the one-year statute of limitations began to run the day after the Antiterrorism
8 and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244(d), was passed
9 on April 25, 1996. Petitioner is not entitled to either statutory or equitable tolling. Id. at
10 pgs. 5-10. As a result, Respondent argues the ruling in Johnson does not apply to
11 Petitioner's claims. Id. at pg. 6. Petitioner filed a response in opposition to motion to
12 dismiss on February 15, 2017. Doc. No. 10.

13 On July 5, 2017, the Honorable Barbara L. Major, United State Magistrate Judge,
14 issued a report and recommendation ("Report") addressing the motion and
15 recommending this Court grant Respondent's motion to dismiss the Petition with
16 prejudice. Doc. 11 at pg. 11. Objections to the Report were due by August 4, 2017. Id.
17 Petitioner filed a letter which the Court construes as an objection to the Report on August
18 1, 2017. Doc. No. 12. Petitioner argues the Report was wrong in its understanding and
19 application of Johnson. Id. at pg. 1.

20 After careful consideration of the pleadings and relevant exhibits submitted and for
21 the reasons set forth below, this Court ADOPTS the magistrate judge's Report and
22 GRANTS Respondent's motion to dismiss.

23 DISCUSSION

24 I. Legal Standard

25 The district court's role in reviewing a magistrate judge's report and
26 recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, the court "shall
27 make a de novo determination of those portions of the report...to which objection is
28 made," and "may accept, reject, or modify, in whole or in part, the findings or

1 recommendations made by the magistrate [judge].” Id. The party objecting to the
2 magistrate judge’s findings and recommendation bears the responsibility of specifically
3 setting forth which of the magistrate judge’s findings the party contests. See Fed. R. Civ.
4 P. 72(b). It is well-settled, under Rule 72(b), that a district court may adopt those
5 portions of a magistrate judge’s report to which no specific objection is made, provided
6 they are not clearly erroneous. See Thomas v. Arn, 474 U.S. 140, 149 (1985).

7 II. Analysis

8 a. Statute of Limitations

9 Judge Major found a one year statute of limitations applied to Petitioner’s federal
10 habeas corpus petition. AEDPA imposes a one-year statute of limitations on federal
11 prisoners for writ of habeas corpus filed by state prisoners. 28 U.S.C. § 2244(d). The
12 one-year limitation applies to all habeas petitions filed by persons in custody pursuant to
13 state court judgment. Id. Here, Petitioner was confined as a result of a state court
14 judgment. Doc. No. 11 at pgs. 3-5. Pursuant to 2244(d)(1)(A), the limitation period runs
15 from the date on which the judgment became final by the conclusion of direct review or
16 the expiration of the time for seeking such review. Id. Here, Petitioner pled guilty to
17 second degree murder on January 27, 1982. Lodg. 1:3. Petitioner was sentenced on
18 February 24, 1982. Id. Petitioner’s conviction became final on April 26, 1982. Id.
19 Since Petitioner’s conviction became final prior to the enactment of AEDPA, the statute
20 of limitations expired on April 24, 1997. Hasan v. Galaza, 254 F.3d 1150, 1153 (9th Cir.
21 2001). The instant action was not filed until November 3, 2015. Doc. No. 1. The Court
22 adopts the magistrate judge’s finding as it is not clearly erroneous.

23 b. Commencement of the Statutory Period

24 Judge Major found that the latest start date was the date Petitioner’s judgment
25 became final upon expiration of the time for him to seek such review and no later date
26 would apply. Doc. No 11 at pgs. 5-8. Petitioner claims that under Johnson, his start date
27 should be June 26, 2015, the day of the Johnson ruling. Doc. No. 11 at pg. 5. Petitioner
28

1 argues because he filed his petition in San Diego County Superior Court on June 24,
2 2016, it is timely. Id.

3 Judge Major clarified that the Johnson ruling does not apply to Petitioner's
4 situation. Johnson was narrowly applied to the Armed Career Criminal Act ("ACCA")
5 and not the California second degree murder statute under which Petitioner was
6 convicted. Id. at pg. 6. Moreover, Judge Major also clarified that California Penal Code
7 § 3041's language is dissimilar to the language found in the ACCA's residual clause.
8 Thus, the ruling in Johnson has no impact on § 3041. Id. at pg. 7. Accordingly, Judge
9 Major found the appropriate start date for analyzing the one year statute of limitations is
10 the date Petitioner's judgment became final upon expiration of the time for him to seek
11 review under § 2244(d)(1)(A). Id. at pg. 8. The Court adopts the findings of the Report
12 as it is not clearly erroneous.

13 c. Statutory Tolling

14 Judge Major found the Petition untimely as "[n]one of Petitioner's state petitions
15 were filed before the April 24, 1997 expiration of the statute of limitations." Id. at pg. 9.
16 The court noted that even if Petitioner's earliest filing date of April 24, 2001 were used to
17 calculate potential tolling, Petitioner would still be four years late. Id. Petitioner did not
18 file his state habeas corpus petition until April 24, 2001. Yet an untimely petition does
19 not reinitiate the limitations period once it has already run. Ferguson v. Palmateer, 321
20 F.3d 820, 823 (9th Cir. 2003). Thus, Judge Major determined Petitioner is not entitled to
21 statutory tolling. Doc No. 11 at pg. 9. The Court finds the Report's analysis is not
22 clearly erroneous and adopts the findings of the magistrate judge.

23 d. Equitable Tolling

24 Lastly, Judge Major found Petitioner did not satisfy the requirements laid out in
25 Holland v. Florida, 560 U.S. 631, 645 (2010) (equitable tolling is appropriate in cases
26 where Petitioner exercises adequate diligence in pursuing his rights unless extraordinary
27 circumstances prevent Petitioner from doing so). Id. at pg. 10. The magistrate judge
28 noted Petitioner did not file the instant petition until more than nineteen years after the

1 date of his conviction and only after AEDPA's limitations period expired. Id. Moreover,
2 the magistrate judge also found Petitioner was not diligent in pursuing his rights after the
3 tolling period. Id. at pgs. 10-11; Doe v. Busby, 661 F.3d 1001, 1012-13 (9th Cir. 2011)
4 (finding diligence is required to show Petitioner is eligible for equitable tolling). In
5 addition, the magistrate judge did not find any extraordinary circumstance restrained
6 Petitioner from filing his habeas petitions. Doc. No. 11 at pgs. 10-11. Thus, the
7 magistrate judge found there was not sufficient equitable tolling to deem Petitioner's
8 petition timely. Id. at pg. 11. The Court finds the Report's analysis is not clearly
9 erroneous and adopts the findings of the magistrate judge.

10 e. Petitioner's Objection to the Report

11 Petitioner filed a letter which the Court construes as an objection to the Report on
12 August 1, 2017. Doc. No. 12. The letter indicates that Petitioner believes the Report was
13 wrong in its understanding and application of Johnson. Id. at pg. 1.

14 The Court only needs to consider objections that are filed in a timely manner and
15 specific in nature. See Thomas, 474 U.S. 140, 151 (1985). This Court's independent
16 review of the record, the relevant lodgments presented by the parties, and the Report
17 (Doc. No. 11), reveals that the Magistrate Judge provided a cogent analysis of each of the
18 four claims presented by Petitioner. After reviewing Petitioner's Objections, this Court
19 finds that Petitioner does not specifically object to the procedural background of the
20 federal or state proceedings (Id. at pgs. 1-3); to the lengthy and extensive transcript-
21 supported factual background (Id. at pgs. 3-11); or to the scope of review (Id. at pg. 3)
22 utilized by the magistrate judge. The Petitioner's objections do not point to specific
23 findings or conclusions in the Report, but instead appear to be general objections to the
24 Report's analysis and conclusions, making the same arguments made in the original
25 federal habeas petition. Id. at pgs. 1-17. For these reasons, the Court determines
26 Petitioner's objection to be general in nature.

1 The Court conducted a de novo review, independently reviewing the Report and all
2 relevant papers submitted by both parties, and finds the Report provides a cogent analysis
3 of the issues presented in the motion.

4 **CONCLUSION AND ORDER**

5 For the reasons set forth above, IT IS HEREBY ORDERED:

- 6 1. The finding and conclusions of the magistrate judge presented in the Report (Doc.
7 No. 11) are ADOPTED in the entirety;
- 8 2. Respondent's Motion to Dismiss (Doc. No. 6) is GRANTED;
- 9 3. The Petition For Writ of Habeas Corpus (Doc. No. 1) is DIMISSED WITH
10 PREJUDICE.

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12 DATED: September 21, 2017



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15 JOHN A. HOUSTON
16 United States District Judge
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