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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HECTOR ENRIQUES PEREZ,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

NO: 1:17-CV-3006-RMP

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING HABEAS PETITION

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**BEFORE THE COURT** is a Report and Recommendation (“R&R”), **ECF No. 30**, filed by Magistrate Judge John Rodgers on June 5, 2017, resolving a motion to dismiss, **ECF Nos. 20 and 26**, filed by the Washington Attorney General on behalf of Respondent Jeffrey Uttecht. Petitioner timely objected to the R&R. **ECF No. 32**. Having reviewed the parties’ filings, the R&R, and the relevant law, the Court is fully informed.

Mr. Perez argues that he is entitled to tolling of the statute of limitations during the period in which his personal restraint petitions were pending. **ECF No. 32** at 3-7. The Court notes that Magistrate Judge Rodgers determined that Mr.

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING  
HABEAS PETITION ~ 1

1 Perez’s habeas petition would be time-barred even if the statute of limitations were  
2 tolled throughout the period when all of the PRPs that Mr. Perez filed. ECF No. 30  
3 at 5.

4 Mr. Perez further argues that he is entitled to an equitable exception to the  
5 statute of limitations because he has made a credible showing of actual innocence.  
6 ECF No. 32 at 20. Mr. Perez relies on a Washington state appellate decision, *State*  
7 *v. Wilson*, 174 Wn. App. 328 (2013), discussing expert witness testimony about a  
8 physical virginity examination of a minor who allegedly had been the victim of  
9 sexual assault. *See* ECF Nos. 1 at 7-9; 32 at 20. Although not explicit about how  
10 the expert witness opinion and evidence discussed in *Wilson* amounts to a showing  
11 of actual innocence, Mr. Perez suggests that the absence of such evidence in his case  
12 resulted in his conviction. *Id.*

13 The Court finds no persuasive showing of actual innocence in Mr. Perez’s  
14 habeas petition or objection to support equitable tolling of the time-bar. *See*  
15 *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928 (2013) (requiring that a petitioner who  
16 seeks actual innocence relief from a statute of limitations to offer new, reliable  
17 evidence and “show that it is more likely than not that no reasonable juror would  
18 have convicted him in light of the new evidence”). Therefore, the Court **adopts** the  
19 Report and Recommendation, **ECF No. 30**, in its entirety.

