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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 WAYNE ALLEN BORST,

9 Petitioner,

10 v.

11 PATRICK GLEBE,

12 Respondent.

CASE NO. C13-5001 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 20), and
15 Plaintiff Wayne Allen Borst’s (“Borst”) objections to the R&R (Dkt. 21).

16 On April 22, 2013, Judge Strombom issued the R&R recommending that the Court
17 find that Borst’s petition for writ of habeas corpus is time-barred and that it is not subject
18 to equitable tolling for any reason, including Borst’s claim of actual innocence. Dkt. 20.
19 Borst objects on numerous grounds, including that his petition qualifies for equitable
20 tolling and that his petition is not time-barred. Dkt. 21.

21 First, Borst has failed to show that he qualifies for equitable tolling. He fails to
22 submit any facts in support of circumstances beyond his control that prevented him from

1 timely filing the proper documents with the appropriate courts. Therefore, this objection
2 is without merit.

3 Second, Borst argues that the state court's decision became final on October 30,
4 2012. Borst, however, has attached the certificate of finality from the state court for the
5 collateral attack proceeding in which the state court determined that Borst's collateral
6 attack was time-barred. Dkt. 21, Exh. A. That certification of finality does not reset the
7 one-year period of limitation for filing his federal petition for a writ of habeas corpus.
8 Therefore, this objection is without merit.

9 The Court having considered the R&R, Borst's objections, and the remaining
10 record, does hereby find and order as follows:

- 11 (1) The R&R is **ADOPTED**;
- 12 (2) Borst's petition for writ of habeas corpus is **DIMISSED** as time-barred;
- 13 (3) A Certificate of Appealability is **DENIED**; and
- 14 (4) The Clerk shall **STRIKE** all other pending motions and close this case.

15 Dated this 31st day of May, 2013.

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BENJAMIN H. SETTLE
United States District Judge