

1
2 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA

4 THOMAS WILLIAM SINCLAIR
RICHEY,

5 Petitioner,

6 v.

7 MIKE OBERLAND,

8 Respondent.

CASE NO. C13-5231 BHS

ORDER DECLINING TO ADOPT
REPORT AND RECOMMENDATION
AND REMANDING FOR FURTHER
CONSIDERATION

9
10 This matter comes before the Court on the Report and Recommendation (“R&R”)
11 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 48), and
12 Petitioner Thomas William Sinclair Richey’s (“Richey”) objections to the R&R (Dkt.
13 49).

14 On September 21, 2015, Judge Strombom filed the R&R recommending that the
15 Court dismiss Richey’s petition because it is time barred. Dkt. 48. On October 10, 2015,
16 Richey filed objections. Dkt. 49.

17 The district judge must determine de novo any part of the magistrate judge’s
18 disposition that has been properly objected to. The district judge may accept, reject, or
19 modify the recommended disposition; receive further evidence; or return the matter to the
20 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

21 In this case, Richey objects to the R&R on multiple grounds. Richey argues that,
22 for purposes of timing, the relevant judgment should be the 2010 amended judgment and

1 not his original 1987 judgment. Dkt. 49 at 2-5. In light of the Ninth Circuit opinion, the
2 Court agrees with Richey. *See Richey v. Sinclair*, 585 Fed. App'x 636, 637 (9th Cir.
3 2014) (“the 2010 corrected judgment removed an invalid basis for Richey’s conviction,
4 i.e., attempted felony murder, and was a new, intervening judgment.”). Regardless of
5 how many times the Washington state courts have reached a contrary conclusion, the
6 Ninth Circuit opinion is the law of the case. As such, the 2010 judgment is the relevant
7 judgment for computing time periods. Therefore, the Court declines to adopt the R&R’s
8 conclusion that the time period for petitioner to file a federal habeas action expired on
9 April 23, 1997.

10 The Court has reviewed the record and is unable to resolve the matter without
11 further briefing. For example, the government’s most recent response is based on the
12 premise that the Ninth Circuit’s conclusion is “frivolous.” Dkt. 40 at 11. That is an
13 argument for the Ninth Circuit or the Supreme Court, not this Court. Therefore, the
14 Court having considered the R&R, Richey’s objections, and the remaining record, does
15 hereby find and order as follows:

- 16 (1) The Court **DECLINES** to adopt the R&R; and
- 17 (2) This matter is remanded for further consideration.

18 Dated this 9th day of December, 2015.

19
20 
21 BENJAMIN H. SETTLE
22 United States District Judge