

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

4 RICHARD WESLEY BRYAN,
5
6 Petitioner,

v.

7 PATRICK GLEBE,
8
9 Respondent.

CASE NO. C14-5147BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION AND
DENYING PETITIONER'S
MOTION

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. 47),
12 Petitioner Richard Wesley Bryan's ("Bryan") objections to the R&R (Dkt. 48), and
13 Bryan's motion for emergency injunctive relief (Dkt. 53).

14 On December 8, 2016, Judge Strombom issued the R&R recommending that the
15 Court dismiss Bryan's petition with prejudice because it is time barred and Bryan has
16 failed to establish equitable tolling or actual innocence. Dkt. 47. On December 27, 2016,
17 Bryan filed objections arguing that he is entitled to equitable remedies. Dkt. 48. On
18 January 20, 2017, Bryan filed a motion for emergency injunctive relief requesting that the
19 Court enjoin the state from transferring Bryan to a different institution. Dkt. 53.

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

1 In this case, Bryan has failed to show that he is entitled to any equitable remedy.
2 Bryan's lack of diligence in filing his state and federal petitions preclude equitable
3 tolling. Moreover, he has failed to meet the extremely high burden to establish actual
4 innocence. Therefore, the Court adopts the R&R.

5 Regarding Bryan's alleged transfer, the Court is without authority to enjoin the
6 state and, more importantly, there is no need to allow Bryan additional time to pursue his
7 claims in this Court. This order dispenses with Bryan's claims in this Court, and Bryan
8 has filed a notice of appeal. If he needs more time on appeal, Bryan should file a motion
9 in that court. In other words, Bryan has failed to provide sufficient reason to prevent any
10 transfer until all of his habeas claims are completely exhausted. Therefore, the Court
11 having considered the R&R, Bryan's objections, Bryan's motion, and the remaining
12 record, does hereby find and order as follows:

- 13 (1) The R&R is **ADOPTED**;
- 14 (2) The Court **DISMISSES with prejudice** Bryan's petition as time barred;
- 15 (3) The Court **DENIES** a Certificate of Appealability;
- 16 (4) The Court **DENIES** Bryan's motion for temporary injunctive relief; and
- 17 (5) The Clerk shall close this case.

18 Dated this 24th day of January, 2017.

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21 BENJAMIN H. SETTLE
22 United States District Judge