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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 WILLIAM JAMES ROY MALICOAT,

7 Petitioner,

8 v.

9 MIKE OBENLAND,

10 Respondent.

No. C14-5578 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS

11 The Court, having reviewed the petition for writ of habeas corpus, the response, the
12 Report and Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report
13 and Recommendation (Dkt. 17) and the remaining record, does hereby find and **ORDER:**

- 14 (1) The Court adopts the Report and Recommendation (Dkt. 16).
- 15 (2) In his objections, petitioner requests relief under Fed.R.Civ.P. 59(e). Relief is not
16 appropriate under that rule. This is a habeas corpus action challenging
17 petitioner's conviction, not a request for relief under the civil rules of procedure.
18 This motion for writ of habeas corpus is time barred under 28 U.S.C. § 2244(d).
19 Petitioner claims that, had he known about statements Shane Sullivan and the
20 victim's father made to police, he would have elicited evidence that would have
21 bolstered his self defense claim; he contends that this evidence supports his claim
22 of actual innocence. This habeas corpus claim is without merit. The Washington
23 Supreme Court carefully analyzed petitioner's claim for purposes of the actual
24 innocence exception to the state time bar statute, and concluded that petitioner
25 failed to demonstrate the actual innocence necessary to equitably avoid the time
26 limit on collateral attack. Likewise, petitioner has not demonstrated actual
innocence in order to avoid the time bar in this habeas corpus action. Petitioner
received the police statements in 2009, and he did not file this petition for writ of
habeas corpus until July 14, 2014. Further, his claims are not sufficient to
constitute actual innocence for either pursuing procedurally defaulted claims, or
for stating a freestanding claim of actual innocence. The court concurs with the
analysis in the Report and Recommendation. Petitioner's petition for writ of
habeas corpus is time barred under 28 U.S.C. § 2244(d).

ORDER ADOPTING REPORT AND RECOMMENDATION - 1

- 1 (3) The petition for writ of habeas corpus is **DISMISSED** as time barred under 28
2 U.S.C. § 2244(d).
3 (4) The issuance of a certificate of appealability is **DENIED**.
4 (5) The Clerk is directed to send copies of this Order to Petitioner, counsel for
5 Respondent and to the Hon. Karen L. Strombom.

6 **DATED** this 12th day of November, 2014.

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9 ROBERT J. BRYAN
10 United States District Judge
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