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DEC 08 1999
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RECEIVED
DEC 10 1999
ATTORNEY GENERAL'S OFFICE
CRIMINAL JUSTICE DIV - OLYMPIA

RAALLAN GARRED,

Plaintiff,

v.

KAY WALTERS,

Defendant.

Case No. C99-5540RJB

ORDER

This matter comes before the court on consideration of the Report and Recommendation of the Magistrate Judge (Dkt. #7), plaintiff's Objections to the Report and Recommendation (Dkt. #10), and Plaintiff's Motion Clarifying and Motion to Withdraw Without Prejudice (Dkt. #9). The court has considered the pleadings filed in support of the Report and Recommendation, the plaintiff's motions and the file herein.

1. Report and Recommendation of Magistrate Judge
2. Plaintiff's Objections to the Report and Recommendation.

The Magistrate Judge recommends that the plaintiff's Petition for a Writ of Mandamus be dismissed because it is actually a second untimely attempt to contest his state court conviction. The Magistrate Judge also recommends dismissal because the petition is frivolous, lacks an arguable basis in law or fact, and fails to state a claim for purposes of 28 U.S.C. §§ 1915A(b) and

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1 1915(e)(2)(B). The plaintiff objects to the Magistrate Judge's Report and Recommendation and
2 argues that his inexperience of the law and procedure should mitigate against the strict enforcement
3 of time limitations for attacks on his conviction.

4 The Magistrate Judge's recommendation is well founded and supported with convincing
5 authority. The Report and Recommendation should be approved and adopted. The plaintiff's
6 objections are not persuasive, and his inexperience is not a sufficient reason to ignore clear and well
7 established procedure to attack a criminal conviction.

8 3. Motion Clarifying and Motion to Withdraw Without Prejudice.

9 The plaintiff seeks permission to withdraw his complaint and petition without prejudice.
10 This motion comes after the Report and Recommendation of the Magistrate Judge, and after the
11 complaint and petition was fully considered on its merits. Since the Magistrate Judge has
12 determined that the petition is frivolous, the plaintiff gives no authority to show that if he refiles this
13 petition, he can cure the defects set forth by the Magistrate Judge. The motion to withdraw should
14 be denied.

15 Therefore, it is hereby

16 **ORDERED** that the Report and Recommendation of the Magistrate Judge (Dkt. #7 is
17 **ADOPTED**. The complaint is **DISMISSED** as frivolous and for failure to state a claim pursuant to
18 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). It is further

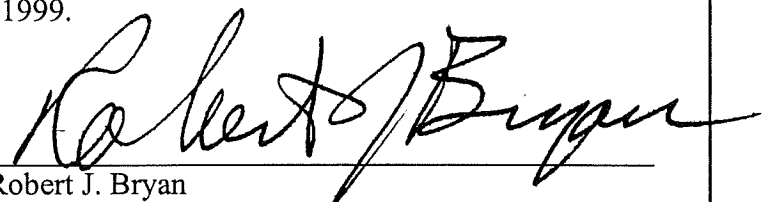
19 **ORDERED** that Plaintiff's Objections to the Report and Recommendation (Dkt. #10) are
20 **OVERRULED**. It is further

21 **ORDERED** that Plaintiff's Motion Clarifying and Motion to Withdraw Without Prejudice
22 (Dkt. #9) is **DENIED**.

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The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

DATED this 8 day of December, 1999.



Robert J. Bryan
United States District Judge