

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
at LEXINGTON

CIVIL ACTION NO: 5:09-CV-285-KKC

BILLY BAKER,

PETITIONER

v.

**MEMORANDUM OPINION AND ORDER**

J. DAVID DONAHUE,  
*Warden*

RESPONDENT

\* \* \* \* \*

This matter is before the Court on a petition for a writ of habeas corpus, filed by Petitioner Billy Baker (“Baker”), *pro se*, pursuant to 28 U.S.C. § 2254. [Rec. 1]. The petition concerns Baker’s conviction in Pike Circuit Court on February 28, 1984.

Consistent with local practice, this matter was referred to United States Magistrate Judge James B. Todd for consideration pursuant to 28 U.S.C. § 636(b). On September 3, 2009, the Respondent moved to dismiss on the grounds that this action is time-barred, having been filed after the applicable statute of limitations had expired. [Rec. 6]. In the alternative, Respondent moved for an extension of time in which to file his Rule 5 answer in the event that the motion to dismiss was denied. Baker failed to respond to the motion to dismiss. On March 17, 2010, the Magistrate Judge issued a Report and Recommendation recommending that Respondent’s motion to dismiss be granted because Baker’s federal habeas claim was not timely filed. [Rec. 8]. Baker failed to file any objections to the Magistrate Judge’s Report and Recommendation.

While this Court is required to make *de novo* determinations of those portions of the Magistrate Judge’s Report and Recommendation to which objections are made, 28 U.S.C. § 636(b)(1)(C), “it does not appear that Congress intended to require district court review of a

magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings." *Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). In addition, parties failing to file objections to a Magistrate Judge's proposed findings of fact and recommendation waive their right to appeal. *See Wright v. Holbrook*, 794 F. 2d 1152, 1154-55 (6th Cir. 1986).

For the reasons set forth in the Magistrate Judge's Report and Recommendation, the Court finds that Baker is not entitled the relief that he seeks because his federal habeas claim was not timely filed. Accordingly, it is **HEREBY ORDERED** as follows:

- (1) The statements of facts and the legal conclusions contained in the United States Magistrate Judge's Report and Recommendation [Rec. 8] are **ADOPTED** and **INCORPORATED** herein by reference;
- (2) Respondent's motion to dismiss this action [Rec. 6] is **GRANTED** and Respondent's motion for extension of time to file his answer is **DENIED AS MOOT**;
- (3) Petitioner Baker's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 shall be **DISMISSED WITH PREJUDICE** and this action shall be **STRICKEN** from the Court's docket.
- (4) A certificate of appealability shall not issue because Petitioner Baker has not made a substantial showing of the denial of any substantive constitutional right;
- (5) Judgment will be entered contemporaneously with this opinion and order in favor of the Respondent.

This 20<sup>th</sup> day of April, 2010.



**Signed By:**

**Karen K. Caldwell**

A handwritten signature in black ink, appearing to read "K.K.C.", written over the printed name.

**United States District Judge**