

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

CIVIL ACTION NO. 5:11-cv-411-KKC

STEVEN LESTER JOHNSON,

PETITIONER

v.

**OPINION AND ORDER**

WARDEN HENRETTA C. CREWS,

RESPONDENT

\*\*\* \*\*

This matter is before the Court on the Petitioner's Petition for Writ of Habeas Corpus (DE 1). The matter was referred to a magistrate judge for a report and recommendation. The Magistrate Judge recommends that the Court deny the petition for two reasons. First, the Magistrate Judge determined that the Petitioner's habeas petition asserts that the state courts incorrectly applied the state Persistent Felony Offender ("PFO") statute. The Magistrate Judge noted that a state court's application of state law is not reviewable by a federal court on habeas review.

Second, the Magistrate Judge determined that the Petitioner's petition was not timely filed. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") established a one-year limitations period for filing § 2254 petitions. 28 U.S.C. § 2244(d)(1). The Magistrate Judge determined that the deadline for Petitioner's § 2254 petition was April 24, 1997. The Petitioner did not file his petition until December 14, 2011, over 14 years after the deadline. The Court recognizes, as the Magistrate Judge did, that the one-year limitations period may be "tolled,"

which means that the habeas petition could be considered on the merits even though it is filed late.

In order for the petition to be considered on its merits, however, the Petitioner must show that “1) he has pursued his rights diligently; and 2) some extraordinary circumstances prevented timely filing.” *Robertson v. Simpson*, 624 F.3d 781, 783-84 (6th Cir.2010). In his objections to the Magistrate Judge’s Report and Recommendation, the Petitioner does not put forth any reason for filing his petition late or otherwise address the Magistrate Judge’s determination that the petition was not timely filed. Accordingly, the Court agrees with the Magistrate Judge’s determination that the petition is time barred. Because the Petitioner has not made the required showing to toll the limitations period, this Court is unable to consider the merits of his argument.

For these reasons, the Court hereby ORDERS that the Petitioner’s Petition for Writ of Habeas Corpus (DE 1) is DENIED.

Dated this 17<sup>th</sup> day of June, 2013.



**Signed By:**

**Karen K. Caldwell** *KKC*

**United States District Judge**