

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JONATHAN LOUIS RUTLEDGE,)
AIS #242525,)
)
Plaintiff,)
)
v.)
)
DEBORAH TEW,)
)
Defendant.)

CASE NO. 2:07-cv-477-WKW

ORDER ADOPTING RECOMMENDATION

On June 13, 2007, plaintiff Jonathan Louis Rutledge (“Rutledge”) filed a response/objection (Doc. # 6) to the Recommendation of the Magistrate Judge filed on June 4, 2007 (Doc. #5), in which he argues that the tolling provision entitles him to tolling of the limitation period. However, as noted in the Recommendation, the statutory tolling provision applicable to Section 1983 actions was rescinded by the Alabama legislature in May of 1996. No other tolling provision applies to this case. Rutledge appears to rely on the tolling provision applicable to Rule 32 petitions for jurisdictional claims, but this provision provides no basis for relief from the limitation period applicable to Section 1983 cases. Rutledge also fails to assert any exceptional circumstances which would warrant equitable tolling of the limitation period. *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir.1999) (A federal limitation period “may be equitably tolled” when a plaintiff “untimely files because of extraordinary circumstances that are both beyond his control and unavoidable with diligence.”); *Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006) (“The plaintiff bears the burden of showing that such extraordinary circumstances exist.”) In determining whether a plaintiff meets this burden, we must keep in mind that “[equitable] tolling is an extraordinary remedy which should

be extended only sparingly.” *Justice v. United States*, 6 F.3d 1474, 1479 (11th Cir. 1993) (Citing *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96, 111 S.Ct. 453, 457-58, 112 L.Ed.2d 435 (1990)).

In light of the foregoing, the plaintiff’s objection is due to be overruled and the Recommendation adopted.

Conclusion

It is ORDERED that:

1. The Objection (Doc. #6) is OVERRULED;
2. The Recommendation of the Magistrate Judge (Doc. # 5) is ADOPTED;
3. This case is DISMISSED with prejudice prior to service of process in accordance with the provisions of 28 U.S.C. § 1915(e)(2)(B)(I);

An appropriate judgment will be entered.

DONE this 18th day of June, 2007.

/s/ W. Keith Watkins

UNITED STATES DISTRICT JUDGE