

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

ROY THOMAS SMITH, JR.,)	
)	
Petitioner,)	
)	
v.)	Case No.: 4:20-cv-00736-LSC-HNJ
)	
WARDEN TERRY RAYBON, et al.,)	
)	
Respondents.)	
)	

MEMORANDUM OPINION

The magistrate judge entered a report on December 17, 2020, recommending the court dismiss Petitioner Roy Thomas Smith, Jr.’s petition for a writ of habeas corpus as untimely pursuant to 28 U.S.C. § 2244(d)(A)(A), (D). Doc. 7. Although the magistrate judge advised the parties of their right to file specific written objections within fourteen days, no objections have been received by the court.

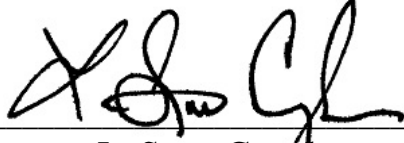
Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court hereby **ADOPTS** the report of the magistrate judge and **ACCEPTS** his recommendation that the court dismiss this action.¹ The court finds the petition is due to be dismissed with prejudice as untimely pursuant to 28 U.S.C. § 2244(d)(1)(A), (D).

¹ Although the magistrate judge recommended that the court dismiss Smith’s petition without prejudice, because the petition is barred by the statute of limitations and cannot be cured, it warrants dismissal with prejudice. *See Thomas v. State of Alabama*, No. CV-14-S-1984-W, 2016

This court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, a “petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that “the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). The court finds Smith’s claims do not satisfy either standard.

The court will enter a separate Final Judgment.

DONE and **ORDERED** on January 15, 2021.



L. Scott Coogler
United States District Judge

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WL 5724697, at *3 (N.D. Ala. Sept. 30, 2016) (concluding petitioner’s untimely § 2254 petition could not be cured and was subject to dismissal with prejudice).