

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

ANTHONY WAYNE McCAA,)

)

Petitioner)

)

v.)

Case No. 7:12-cv-00892-AKK-HGD

)

CYNTHIA WHITE, WARDEN,)

and THE ATTORNEY GENERAL)

OF THE STATE OF ALABAMA,)

)

Respondents.)

MEMORANDUM OPINION

On March 22, 2012, the magistrate judge's report and recommendation was entered and the parties were allowed therein fourteen (14) days in which to file objections to the recommendations made by the magistrate judge. On April 2, 2012, petitioner filed objections to the magistrate judge's report and recommendation.

In his objections, petitioner invokes the doctrine of equitable tolling and asserts the court should consider his untimely § 2254 habeas corpus petition. He avers that he discovered in 2008, at his parole hearing, that he was convicted of capital murder. After that time, he diligently attempted to obtain records pertaining to his conviction from the Circuit Court of Greene County and provides copies of his letters, motions and petitions for writ of mandamus filed with the Clerk of that court and the Alabama

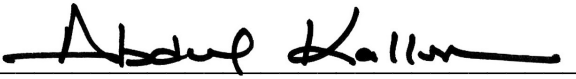
Court of Criminal Appeals. He also provides copies of orders of the Alabama Court of Criminal Appeals denying his mandamus petitions.

A review of the documents submitted by petitioner with his objections reveals that, although he was originally charged with capital murder, he entered a plea of guilty to a reduced charge of murder and was sentenced to life with the possibility of parole. Had he been convicted of capital murder, the only possible sentences would have been life without parole and the death penalty. While petitioner contends that he actually was convicted of capital murder, the court records affirmatively show that he was charged with capital murder but pled guilty to murder. Therefore, his arguments for equitable tolling, that he did not discover he was convicted of capital murder until 2008 and diligently pursued his state court remedies thereafter, are based on an incorrect supposition and are, therefore, unavailing.

After careful consideration of the record in this case and the magistrate judge's report and recommendation and the petitioner's objections thereto, the court hereby **ADOPTS** the report of the magistrate judge, with the exception that petitioner pled guilty to murder after being charged originally with capital murder. The court further **ACCEPTS** the recommendations of the magistrate judge that the petition for writ of habeas corpus be denied.

A separate order in conformity with this Memorandum Opinion will be entered contemporaneously herewith.

Done the 27th day of June, 2012.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE