

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JAMES E. CLEMONS
ADC # 78567

PETITIONER

v.

No. 5:12-cv-176-DPM-JJV

RAY HOBBS, Director, Arkansas
Department of Correction

RESPONDENT

ORDER

Clemons has objected to Magistrate Judge Volpe's proposed findings and recommendations. *Document Nos. 8 & 10*. Judge Volpe recommended that the Court dismiss Clemons's *habeas corpus* petition as untimely. *Document No. 8*. The conclusion hinges on whether Clemons properly filed a timely Rule 37 petition in state court, thereby tolling the statute of limitations. He sent it to the circuit judge; did he file it with the circuit clerk? Judge Volpe, like the Arkansas Supreme Court before him, concluded that Clemons failed to do so. *Document No. 8, at 4; Clemons v. State, 2011 Ark. 345*. But in response, Clemons has submitted what appears to be a file-marked copy of his Rule 37 petition. The document reflects filing by the Union County Clerk in December 2010. *Document No. 9, at 29*. This is at odds with the circuit clerk's affidavit. *Document No. 7-6*.

On *de novo* review, the Court declines to adopt Judge Volpe's recommendation, *Document No. 8*. FED. R. CIV. P. 72(b)(3). The Court appreciates Judge Volpe's good work thus far and refers the case back to him to sort out the filing issue and for further development in general.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

24 August 2012
