

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

JUSTIN ANDERSON

PETITIONER

v.

No. 5:12-cv-280-DPM-BD

RAY HOBBS, Arkansas Department  
of Correction

RESPONDENT

ORDER

1. On *de novo* review, the opposed recommendation, No 25, is adopted. FED. R. CIV. P. 72(b)(3). Because Anderson hasn't exercised reasonable diligence under the circumstances, the Court agrees that § 2244(d)(1)(A), not (d)(1)(D), governs the one-year clock. Anderson's petition is therefore time barred; and, for the reasons stated by Magistrate Judge Deere, Anderson isn't entitled to equitable or statutory tolling.

2. The *Trevino/Martinez* exception doesn't apply to the limitations issue. It's a matter of procedural-default law. *Trevino v. Thaler*, 133 S. Ct. 1911 (2013); *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). Anderson, though, makes a novel and somewhat persuasive argument to the contrary. The Court has found no supporting authority directly on point. For the Court to issue a certificate of appealability, Anderson has two hurdles to top. He's across the first one; reasonable judges could disagree about the reach of *Trevino* and

*Martinez's* reasoning. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). But he falters at the second; Anderson hasn't made the substantial showing of a violation of a constitutional right. 529 U.S. at 484-85; 28 U.S.C. § 2253(c)(2).

3. Objections, *No* 26, overruled. Recommendation, *No* 25, adopted.

So Ordered.

D.P. Marshall Jr.  
D.P. Marshall Jr.  
United States District Judge

26 August 2016