

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

**BRIAN KEITH MISENHEIMER
ADC #136527**

PETITIONER

v.

Case No. 5:12-cv-00387 KGB/BD

**RAY HOBBS, Director,
Arkansas Department of Correction**

RESPONDENT

ORDER

The Court has reviewed the Recommended Disposition (“Recommendation”) received from Magistrate Judge Beth Deere, has considered plaintiff Brian Keith Misenheimer’s objections to the Recommendation, and has reviewed *de novo* the record and those portions of the Recommendation to which Mr. Misenheimer objects. After careful consideration, this Court adopts the Recommendation as its own. Mr. Misenheimer’s petition for writ of habeas corpus is dismissed with prejudice (Dkt. No. 1).

Mr. Misenheimer’s objections to the Recommendation focus on the application of equitable tolling to his claims. Mr. Misenheimer essentially argues the facts of his case are more closely aligned with the facts of *Holland v. Florida*, 130 S.Ct. 2549 (2010), and that the Court’s reasoning there should control whether equitable tolling applies here. This Court disagrees. This Court determines that, based on the record before it, its ruling here is guided by the Court’s reasoning set forth in *Pace v. DiGuglielmo*, 544 U.S. 408, 125 S.Ct. 1807 (2005). For this reason, the Court determines equitable tolling does not apply.

When entering a final order adverse to a habeas corpus petitioner, the Court must issue or deny a certificate of appealability. Rule 11 of the Rules Governing Section 2254 Cases. A certificate of appealability may issue only if a petitioner has made a substantial showing of the

denial of a constitutional right. 28 U.S.C. § 2253(c)(1)-(2). In this case, there is no basis for this Court to issue a certificate of appealability. Accordingly, a certificate of appealability is denied.

IT IS SO ORDERED THIS the 20th day of May, 2013.

Handwritten signature of Kristine G. Baker in black ink.

KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE