

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

MELVIN L. JEFFERSON,
ADC #090532

PETITIONER

v.

No. 5:14-cv-414-DPM

WENDY KELLEY,* Director,
Arkansas Department of Correction

RESPONDENT

ORDER

On *de novo* review, the Court adopts the recommendation, *No. 11*, as supplemented and overrules Jefferson's objections, *No. 12*. FED. R. CIV. P. 72(b)(3).

Jefferson's petition is time barred; and he hasn't shown the diligence or extraordinary circumstances necessary to warrant equitable tolling. *Holland v. Florida*, 560 U.S. 631, 649, 653–54 (2010). For example, even if Jefferson's *habeas* clock were tolled while he was being represented by allegedly ineffective counsel, he says counsel only represented him until 2010. *No. 2 at 14*. He offers no rare or extraordinary facts that prevented him from filing his petition for another four years. Further, while Jefferson's attempt to read

*The Court directs the Clerk to amend the docket to reflect the current Director of the Arkansas Department of Correction, Wendy Kelley. FED. R. CIV. P. 25(d).

Martinez and *Holland* together is creative, it is unavailing. Magistrate Judge Kearney is right; *Martinez* applies to procedurally defaulted claims, not untimely ones. *Martinez v. Ryan*, 132 S. Ct. 1309 (2012); *No 11 at 5*.

Jefferson's petition, *No 2*, will be dismissed with prejudice. No certificate of appealability will issue. 28 U.S.C. § 2253(c)(1)-(2).

So Ordered.

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

29 January 2016