

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

LOUIS RICARDO BUTLER

PETITIONER

v.

No. 5:15-cv-285-DPM

WENDY KELLEY, Director of the
Arkansas Department of Correction

RESPONDENT

ORDER

1. On *de novo* review, the Court adopts Magistrate Judge Ray's careful recommendation, *No 14*, and overrules Butler's objections, *No 17*. FED. R. CIV. P. 72(b)(3). Butler makes a hard run at equitable tolling; but he focuses primarily on the period when his Rule 37 counsel still represented him. Even if the Court assumed diligence during that time, though, Butler's equitable tolling argument would still fail. The one-year hiatus between the Arkansas Supreme Court's decision on Butler's Rule 37 appeal and the filing of his *habeas* petition precludes a diligence finding. *Nelson v. Norris*, 618 F.3d 886, 892-93 (8th Cir. 2010). The precedent on tolling is strict; and under those cases, Butler's petition is untimely.

2. Butler's motion to stay, *No 18-1*, is denied. The Court isn't convinced that the ongoing state proceedings will produce any evidence to shore up

diligence during the year-long period noted above. Butler's motion to expand the record, *No 19*, is similarly denied. None of the materials attached to the motion would change the diligence calculus.

* * *

Recommendation, *No 14*, adopted. Motions, *No 18-1 & 19*, denied. Butler's petition 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.
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United States District Judge

2 September 2016