

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

DALLAS GENE ROY  
ADC #134765

PETITIONER

VS.

CASE NO. 5:17CV00216-JLH-BD

WENDY KELLEY, Director,  
Arkansas Department of Correction

RESPONDENT

**ORDER**

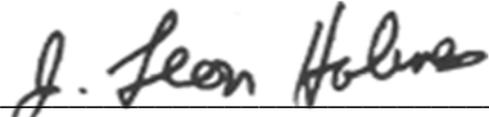
United States Magistrate Judge Beth Deere has recommended that the habeas petition of Dallas Gene Roy filed pursuant to 28 U.S.C. § 2254 be dismissed because it is barred by the one-year period of limitations in 28 U.S.C. § 2244(d)(1). In response, Roy has argued that he is entitled to equitable tolling, citing *McQuiggin v. Perkins*, 569 U.S. 383, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013). There, the Supreme Court held that actual innocence, if proved, serves as grounds for equitable tolling of the statute of limitations in section 2244(d)(1). *Id.* at 1928. The Court cautioned, however, “that tenable actual-innocence gateway pleas are rare[.]” *Id.* Furthermore, while lack of diligence does not absolutely bar tolling of the statute of limitations based on actual innocence, timing of the petition is a factor bearing on the reliability of the evidence purporting to show actual innocence. *Id.* Roy’s objections discuss the law related to actual innocence but present nothing to show how he could prove in his case that he was actually innocent of the crime for which he has been convicted. He has submitted no affidavits or other evidence, nor has he alleged facts that would support a claim of actual innocence. Furthermore, he has delayed more than seven years after the statute of

limitations expired before filing the current petition, which bears on the credibility of his claim.

The Court has carefully reviewed the recommended disposition filed by Magistrate Judge Beth Deere. After careful consideration of the recommendation and Roy's timely objections, and after a *de novo* review of the record, the Court concludes that the recommendation should be and hereby is approved and adopted as this Court's findings, with the additional comments made hereinabove.

Dallas Gene Roy's petition for writ of habeas corpus is DENIED and dismissed with prejudice. Document #2.

IT IS SO ORDERED this 1st day of December, 2017.

A handwritten signature in black ink that reads "J. Leon Holmes". The signature is written in a cursive style with a horizontal line underneath the name.

J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE