

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

DONALD FEARS

PETITIONER

v.

Civil No. 1:11-cv-01009

RAY HOBBS, Director,
Arkansas Department of Correction

RESPONDENT

JUDGMENT

Before the Court is the Report and Recommendation filed January 18, 2012, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 14). Judge Bryant recommends that Petitioner's habeas petition in the above-styled case be denied as untimely and dismissed with prejudice. Petitioner objects to the Report and Recommendation's conclusion and contends that the Constitution places no time limit on pursuing habeas petitions. To the extent that Petitioner is challenging the underlying constitutionality of the one-year statute of limitations outlined in the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), his objection is without merit. *Cf. Felker v. Turpin*, 518 U.S. 651 (1996) (upholding AEDPA's restrictions on successive petitions); *see also Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 113 (2d Cir. 2000) ("[B]ecause AEDPA's one-year statute of limitations leaves habeas petitioners with some reasonable opportunity to have their claims heard on the merits, the limitations period does not render the habeas remedy 'inadequate or ineffective to test the legality of detention,' and therefore does not *per se* constitute an unconstitutional suspension . . .").

Accordingly, the Court adopts the Report and Recommendation *in toto*. Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1) is **DENIED** as untimely and **DISMISSED WITH**

PREJUDICE. Petitioner's Motion to Appoint Counsel (ECF No. 16) is **DENIED AS MOOT.**

IT IS SO ORDERED, this 17th day of February, 2012.

/s/ Susan O. Hickey
Hon. Susan O. Hickey
United States District Judge