

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

TERRY D. SMITH,

Petitioner,

v.

Case No. 3:09cv278/MCR/EMT

EDWIN G. BUSS,

Respondent.

_____ /

ORDER

This cause comes on for consideration upon the magistrate judge’s Report and Recommendation dated February 4, 2011. (Doc. 40). The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a de novo determination of any timely filed objections.

Having considered the Report and Recommendation, and any objections thereto timely filed, I have determined that the Report and Recommendation should be adopted.

Accordingly, it is now **ORDERED** as follows:

1. The magistrate judge’s Report and Recommendation is adopted and incorporated by reference in this order.
2. Petitioner’s attempts to amend his habeas petition to add the claims asserted in his Reply (doc. 25) and his Proposed Second Amended Petition (see doc. 33, attachment) are **DENIED as futile**, since they are time barred.
3. Petitioner’s First Amended Petition (doc. 7) is **DENIED**.
4. A certificate of appealability is **DENIED**.
5. The clerk is directed to close the file.

DONE AND ORDERED this 25th day of February, 2011.

s/ M. Casey Rodgers

**M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE**