

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

DERRICK L. WYCHE

Petitioner,

v.

CASE NO. 4:10cv42-SPM/WCS

WALTER MCNEIL,

Respondent.

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ORDER

THIS CAUSE comes before the Court for consideration of the magistrate judge's report and recommendation (doc. 9) dated April 13, 2010. Petitioner has filed objections (doc. 16) pursuant to Title 28, United States Code, Section 636(b)(1). Despite the objections, I have determined that the report and recommendation should be adopted.

The § 2254 petition was not filed within the one year limitations period. Therefore, Petitioner's Youngblood claim is not cognizable unless he can demonstrate that an exception to the limitations period should be applied. Petitioner relies on the actual innocence exception, but he has not demonstrated "that it is more likely than not that no reasonable juror would have found

petitioner guilty beyond a reasonable doubt,” which is the standard that applies. Johnson v. Fla. Dept. of Corr., 513 F.3d 1328, 1333-34 (11th Cir. 2008) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)). Accordingly, it is hereby ORDERED as follows:

1. The magistrate judge’s report and recommendation (doc. 9) is ADOPTED and incorporated by reference in this order.
2. The § 2254 petition (doc. 1), challenging Petitioner’s 2003 conviction and sentence for robbery with a weapon and false imprisonment by use of firearm, imposed by the Second Judicial Circuit, Leon County, is dismissed as untimely.

DONE AND ORDERED this 12th day of May, 2010.

s/ Stephan P. Mickle
Stephan P. Mickle
Chief United States District Judge