

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

KERRY E. CUMMINGS,

Petitioner,

v.

CASE NO. 4:11cv195-MP-CAS

KENNETH S. TUCKER,

Respondent.

_____ /

ORDER

This cause comes on for consideration upon the magistrate judge's Report and Recommendation dated August 7, 2012. (Doc. 19). 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. Respondent's motion to dismiss (doc. 15) is GRANTED and the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (doc. 1) is DISMISSED as untimely.
3. A certificate of appealability is DENIED pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the U.S. District Courts.

DONE and ORDERED this 6th day of September, 2012.

sl M. Casey Rodgers

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