

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

BRIAN KEITH CARSTEN,

Petitioner,

v.

Case No. 5:22cv50-TKW-HTC

RICKY DIXON,

Respondent.

ORDER

This case is before the Court based on the magistrate judge's Report and Recommendation (Doc. 11). No objections were filed.

Upon due consideration of the Report and Recommendation and the case file, the Court agrees with the magistrate judge's determinations that Petitioner's habeas petition is untimely even if the time that the allegedly erroneously-denied petition for belated appeal was pending is excluded from the one-year period in 28 U.S.C. §2244(d)(1)(A); that Petitioner is not entitled to equitable tolling; and that Petitioner has not made a substantial showing of the denial of a constitutional right such that a certificate of appealability is warranted. Accordingly, it is

ORDERED that:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this Order.

2. Respondent's motion to dismiss (Doc. 8) is **GRANTED**.
3. Petitioner's §2254 habeas petition challenging the conviction in *State v. Carsten*, Bay County Case No. 2014CF3394, is **DISMISSED WITH PREJUDICE** as untimely.
4. A certificate of appealability is **DENIED**.
5. The Clerk is directed to enter judgment in accordance with this Order and close the file.

DONE and ORDERED this 21st day of November, 2022.



T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE