

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

SCOTT HICKS,

Petitioner,

v.

Case No.: 5:24cv68-MW/MAF

**RICKY DIXON, Secretary,
Florida Department of Corrections,**

Respondent.

**ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION**

This Court has considered, without hearing, the Magistrate Judge's Report and Recommendation. ECF No. 16. On December 16, 2024, Petitioner filed a motion for extension of time to file objections. ECF No. 17. This Court granted the motion and set Petitioner's deadline to file objections as December 27, 2024. ECF No. 18. That deadline expired ten days ago, and Petitioner has not filed objections. Accordingly, the report and recommendation is ripe for review.

The Magistrate Judge recommends dismissal of the § 2254 petition because the petition is untimely and equitable tolling does not apply. This Court agrees with the following additional comments regarding equitable tolling. The Magistrate Judge asserts that equitable tolling ought not to apply because Petitioner's attorneys' asserted negligence does not warrant tolling of the deadline to file the § 2254

petition. This Court agrees and notes that even if the deadline expired while Petitioner was unrepresented but diligently searching for new counsel to represent him in his post-conviction proceedings, that search for counsel would also not warrant equitable tolling. *See, e.g., Minor v. Richie*, No. 2:19-CV-373-MHT-KFP, 2022 WL 21794364, at *3 (M.D. Ala. Mar. 25, 2022), *report and recommendation adopted*, No. 2:19CV373-MHT, 2022 WL 21794361 (M.D. Ala. Apr. 19, 2022) (noting that petitioner’s mother’s failure to hire a lawyer to file a timely § 2254 petition did not demonstrate entitlement to equitable tolling, especially when petitioner “without the aid of a lawyer . . . could have prepared and timely filed his petition if he had acted with reasonable diligence” and that “pro se status is not an ‘extraordinary circumstance’ warranting equitable tolling”). Accordingly, upon consideration, no objections having been filed by the parties,

IT IS ORDERED:

The report and recommendation, ECF No. 16, is **accepted and adopted** as this Court’s opinion. Respondent’s motion to dismiss, ECF No. 10, is **GRANTED**. The Clerk shall enter judgment stating, “Petitioner Hick’s § 2254 petition, ECF No. 1, is **DISMISSED as untimely.**” A certificate of appealability is **DENIED**. Further, leave to appeal *in forma pauperis* is **DENIED**. The Clerk shall close the file.

SO ORDERED on January 7, 2025.

s/Mark E. Walker
Chief United States District Judge