



Petitioner Adams pled guilty to two (2) counts of burglary and one (1) count of theft by taking in the Superior Court of Miller County on October 23, 2003. He did not file a direct appeal or a state habeas petition attacking his convictions.

A review of the record herein reveals that the filing of this federal habeas corpus petition was clearly untimely. The petitioner did not file a direct appeal of his conviction, making it final on or about November 23, 2003, the date on which the 30-day period for filing a notice of appeal expired.<sup>1</sup> Pursuant to 28 U.S.C. § 2244(d), petitioner then had one year from November 23, 2003, in which to file his federal petition or toll the limitations period by filing a state habeas corpus petition. Petitioner Adams did not file a state habeas corpus petition and did not file this federal habeas corpus petition until December 24, 2008. The court notes that the tolling provision of § 2244(d)(2) therefore does not protect the petitioner herein. See, e.g., Fields v. Johnson, 159 F.3d 914, 916 (5th Cir. 1998); Morris v. Hargett, 1998 WL 856144 (10th Cir. (Okla.)).

Accordingly, it is the recommendation of the undersigned that the respondent's Motion to Dismiss be **GRANTED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, **WITHIN TEN (10) DAYS** of receipt thereof.

SO RECOMMENDED, this 16<sup>th</sup> day of NOVEMBER, 2009.



A handwritten signature in black ink, appearing to read "Claude W. Hicks, Jr." with a stylized flourish at the end.

CLAUDE W. HICKS, JR.  
UNITED STATES MAGISTRATE JUDGE

asb

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<sup>1</sup>Although, as the respondent points out, Georgia law does not provide for an automatic right to a direct appeal from a guilty plea, had petitioner wished to pursue an appeal, his appeal would have been governed by the thirty (30) day deadline set out in O.C.G.A. § 5-6-38.