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IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF GEORGIA MACON DIVISION

STEVEN G. MITCHELL,)
Petitioner,)
v.	CIVIL ACTION NO. 5:11-CV-28 (MTT)
WILLIAM M. TERRY,	
Respondent.)))

ORDER

This case is before the Court on the Recommendation (Doc. 21) of United States Magistrate Judge Charles H. Weigle on the Defendant's Motion to Dismiss (Doc. 13). In the Recommendation, the Magistrate Judge recommends dismissing this action because the Petitioner's petition for writ of habeas corpus is untimely under the one year period of limitation set forth in 28 U.S.C. § 2244(d). Therefore, the Petitioner's petition should be dismissed because it is barred by the applicable limitations period and because Petitioner failed to show any cause for tolling the limitations period. The Petitioner has objected to the Recommendation (Doc. 23). The Court has thoroughly

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¹ It should be noted that the Magistrate Judge is correct when stating that "Petitioner's convictions became final no later than Monday December 31, 2007, the first business day after the twenty day period during which he could have timely filed a petition for writ of certiorari in the Georgia Supreme Court expired." (Doc.21). Because the Defendant did not timely file a writ of certiorari in the state court of last resort, the Georgia Supreme Court, he relinquished his right to file a petition for certiorari with the United States Supreme Court; and therefore, his right to the ninety day tolling period for seeking such review. *See Clay v. United States*, 537 U.S. 522, 527 (2003) (finality attaches "when…the time for filing [United States Supreme Court] certiorari petition expires…").

considered the Petitioner's Objection but concludes that his objections do not warrant rejection or modification of the Magistrate Judge's findings.

The Court accepts and adopts the findings, conclusions and recommendations of the Magistrate Judge. Further, pursuant to the Magistrate Judge's recommendation, a certificate of appealability is denied. The Recommendation is adopted and made the order of this Court. The Motion to Dismiss is **GRANTED**.

SO ORDERED, this the 6th day of September, 2011.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

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