

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

JAMES OTIS BURDEN,

Petitioner,

v.

ROBERT TOOLE, Warden,

Respondent.

CIVIL ACTION NO. 5:12-CV-344 (MTT)

ORDER

Before the Court is the Recommendation of Magistrate Judge Charles H. Weigle. (Doc. 18). The Magistrate Judge recommends granting the Respondent's Motion to Dismiss (Doc. 11) because the Petitioner did not file his 28 U.S.C. § 2254 petition within the one-year period of limitations¹ and failed to establish entitlement to equitable tolling. Accordingly, the Magistrate Judge also recommends denying as moot the Petitioner's Motion for Hearing (Doc. 15).

The Petitioner objects to the Recommendation. (Doc. 19). However, his Objection merely states his desire to appeal the Magistrate Judge's decision and does not object to any specific portion of the Recommendation or present any additional facts or law. After considering the Recommendation and the Petitioner's Objection pursuant to 28 U.S.C. § 636(b)(1), the Court finds he did not timely file his petition and has not shown he is entitled to relief from the one year period set forth in 28 U.S.C. § 2244(d).

¹ The Recommendation inadvertently misstates the date on which the Petitioner filed his state habeas petition as March 11, 2013. (Doc. 18 at 4). The actual date, which the Court applied when considering the Petition, was March 11, 2010. (Doc. 13-2 at 1).

Accordingly, the Recommendation is **ADOPTED** and made the **ORDER** of this Court. Further, the Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

Therefore, the Respondent's Motion to Dismiss is **GRANTED**, the Petitioner's Motion for Hearing is **DENIED as moot**, and a certificate of appealability is **DENIED**.

SO ORDERED, this 28th day of June, 2013.

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