

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

STEVEN EUGENE SMITH,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 5:15-CV-144 (MTT)
)	
Warden XANDERS SAM,)	
)	
Respondent.)	
)	

ORDER

United States Magistrate Judge Charles H. Weigle recommends granting the Respondent's motion to dismiss (Doc. 12) because the Petitioner failed to file his § 2254 habeas petition within the one-year limitations period set forth in the Antiterrorism and Effective Death Penalty Act ("AEDPA") and showed no basis for equitable tolling. (Doc. 20). The Magistrate Judge further recommends that the Petitioner's motions for discovery (Doc. 17), declaratory judgment (Doc. 18), and summary judgment (Doc. 19) be denied as moot. Finally, the Magistrate Judge recommends denying a certificate of appealability for failure to make a substantial showing of the denial of a constitutional right. The Petitioner has objected to the Recommendation and has moved for the appointment of counsel. (Docs. 22-26).

Pursuant to 28 U.S.C. § 636(b)(1), the Court has considered the Petitioner's objection and has made a de novo determination of the portions of the Recommendation to which the Petitioner objects. The Court has reviewed the Recommendation, and the Court accepts and adopts the findings, conclusions, and

recommendations of the Magistrate Judge. The Recommendation is **ADOPTED** and made the order of this Court. Accordingly, the Respondent's motion to dismiss is **GRANTED**, and the petition is **DISMISSED**. (Docs. 1; 12). The Petitioner's motions for discovery, declaratory judgment, and summary judgment are **DENIED as moot**. (Docs. 17-19). The Petitioner's pending motion to appoint counsel is also **DENIED as moot**. (Doc. 26). 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, a certificate of appealability is **DENIED**. Additionally, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3). Accordingly, any motion to proceed *in forma pauperis* on appeal is **DENIED**.

SO ORDERED, this 9th day of November, 2015.

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