

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

REGGIE WHITEHEAD,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION 5:16-CV-166(MTT)
)	
Warden SCOTT CRICKMAR,)	
)	
Respondent.)	
_____)	

ORDER

Before the Court is the Recommendation of Magistrate Judge Charles H. Weigle. Doc. 16. The Magistrate Judge recommends granting the Respondent’s motion to dismiss (Doc. 12) the Petitioner’s Section 2254 petition (Doc. 5) as untimely. The Petitioner has not objected to the Recommendation. 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 (Doc. 12) is **GRANTED**, and the Petitioner’s petition (Doc. 5) is **DISMISSED** as untimely.

CERTIFICATE OF APPEALABILITY

The Court can issue a Certificate of Appealability (“COA”) only if a petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To merit a COA, the Court must determine “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved

in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotation marks omitted) (citations omitted). If a procedural ruling is involved, the petitioner must show “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Petitioner has not made these showings, and accordingly the COA 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). Any motion to proceed *in forma pauperis* on appeal is therefore also **DENIED**.

SO ORDERED, this 12th day of January, 2017.

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