

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DIAMOND BARNES,

Petitioner,

v.

No. 16-798-DRH

JACQUELINE LASHBROOK¹,

Respondent.

MEMORANDUM and ORDER

HERNDON, District Judge:

Pending before the Court is respondent's motion to amend judgment (Doc. 33). Respondent moves the Court to amend both the April 12, 2017 Memorandum and Order and Judgment to reflect that the dismissal should be *with prejudice* and not without prejudice as the Court found that the petition was untimely. The Court agrees with respondent and grants the motion. As the law is clear on this, the Court finds that a response from petitioner is not necessary. "The dismissal of a suit as untimely is a dismissal on the merits, and so should ordinarily be made with prejudice, barring relitigation." *Pavlovsky v. Vannatta*, 431 F.3d 1063 (7th Cir. 2005) (citing *Kratville v. Runyon*, 90 F.3d 195, 198 (7th Cir.1996); *Lebron-Rios v. U.S. Marshal Service*, 341 F.3d 7, 14 (1st Cir.2003); *Kale v. Combined Ins. Co. of America*, 924 F.2d 1161, 1164 (1st Cir.1991)). Thus, the Court **AMENDS** both the April 12, 2017 Memorandum and

¹ Lashbrook is the warden of Menard Correctional Center, where Barnes is incarcerated and is the proper respondent. See. Fed.R.Civ.P. 25(d).

Order and Judgment (Docs. 29 & 30) to reflect that the dismissal in this case is with prejudice. The Court **DISMISSES with prejudice** this matter as untimely and declines to issue a certificate of appealability. Further, the Court **DIRECTS** the Clerk of the Court to enter an amended judgment reflecting the same.

IT IS SO ORDERED.

Signed this 24th day of April, 2017.

David R. Herndon



Digitally signed by
Judge David R.
Herndon
Date: 2017.04.24
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United States District Judge