

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

CIVIL ACTION: 7:11-CV-24-KKC

AARON JASON JUSTICE,

PETITIONER,

v.

OPINION AND ORDER

WARDEN COOKIE CREWS,

RESPONDENT.

*** **

This matter is before the Court on the Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus (DE 1) filed by the Petitioner Aaron Jason Justice. The motion was referred to the United States Magistrate Judge for consideration. The Magistrate Judge entered a Recommended Disposition (DE 6) in which he recommends that the petition be dismissed as time barred and not subject to equitable tolling. The Magistrate Judge further recommends that the Court deny Justice a Certificate of Appealability.

This Court must make a *de novo* determination of those portions of the Magistrate Judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(C).

In his objections, Justice argues that the Pike District Court's procedure for determining that he should be tried as a youthful offender in Pike Circuit Court violated his constitutional rights under *Kent v. United States*, 383 U.S. 54 (1996). Even if this is true, however, it does not affect the Magistrate Judge's determination that Justice's petition is time-barred. As the Magistrate Judge explained, Justice's procedural claim

under *Kent* is not a claim for "actual innocence" such as would permit this Court to toll the one-year limitations period for a habeas claim.

Justice also appears to argue that, because the state court judgment was void for lack of jurisdiction, the one-year limitations period for 2254 petitions does not apply. The Sixth Circuit has rejected the argument that the 2254 time limitations do not apply to a state court judgment that was procured by a procedure that violated federal constitutional rights. *Frazier v. Moore*, 252 F. App'x 1, at *5 (6th Cir. 2007). Likewise, other courts have rejected Justice's argument that a state court judgment that is void is not subject to the one-year limitations period. *Sherman v. Thaler*, Civil Action No. H-09-1409, 2010 WL 1994348, at *2 (S.D. Tex. 2010)(citing cases); *United States ex rel. Wahl v. Sims*, No. 08 CV 1383, 2009 WL 307965, at *2 (N.D. Ill. 2009); *Anders v. Quarterman*, No. 3-07-CV-1142-N, 2007 WL 2915185, at * 3 (N.D. Tex 2007).

For all these reasons, the Court hereby ORDERS as follows:

- 1) the Magistrate Judge's Recommended Disposition (DE 6) is ADOPTED as the Court's opinion;
- 2) Justice's petition under 28 U.S.C. § 2254 (DE 1) is DENIED;
- 3) this action is DISMISSED and STRICKEN from the active docket of this Court; and
- 4) the Court will not issue a Certificate of Appealability.

Dated this 10th day of April, 2012.



Signed By:

Karen K. Caldwell

Handwritten signature of Karen K. Caldwell in black ink.

United States District Judge