

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DARRELL SMITH

CIVIL ACTION

VERSUS

NUMBER: 11-1895

BURL CAIN, WARDEN

SECTION: "J"(5)

ORDER

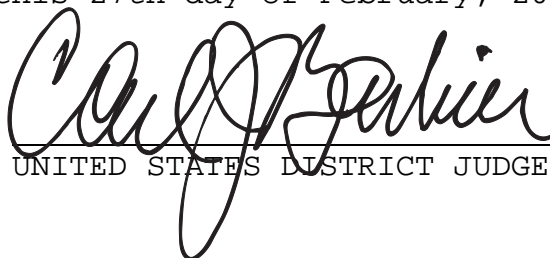
Before the Court is petitioner Darrell Smith's objection (Rec. Doc. 12) to the Magistrate Judge's Report and Recommendation finding that the petition should be dismissed as untimely (Rec. Doc. 11). The petitioner's objection is without merit. The petitioner's arguments concerning the effectiveness of his counsel, his claim of actual innocence of the criminal convictions underlying his enhanced sentence as a habitual offender, and the constitutionality of the state habitual offender law under which he was sentenced are improper because, as the Magistrate Judge correctly found, the instant petition is time-barred. Moreover, the petitioner has failed to even allege facts underlying any possible argument for equitable tolling of the limitation period.¹

¹ Specifically, the petitioner does not allege any facts as to how alleged ineffective assistance of counsel could have prevented the timely filing of his federal habeas petition. Further, claims of actual innocence do not justify equitable tolling. Cousin v. Lensing, 310 F.3d 843, 849 (5th Cir. 2002), cert. denied, 539 U.S. 918 (2003). Lastly, the petitioner cites no case supporting his assertion that his allegation of the unconstitutionality

The Court, having considered the petition, the record, the applicable law, and the Report and Recommendation of the United States Magistrate Judge, hereby overrules the petitioner's objection to the Magistrate Judge's Report and Recommendation, approves the Report and Recommendation, and adopts it as the Court's opinion in this matter. Accordingly;

IT IS ORDERED that the petition of Darrell Smith for issuance of a writ of habeas corpus under Title 28 U.S.C. § 2254 is hereby **DISMISSED WITH PREJUDICE** as untimely.

New Orleans, Louisiana, this 27th day of February, 2012.


UNITED STATES DISTRICT JUDGE

of the state habitual offender law should result in equitable tolling.