UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

LEGORGY DAVIS	**CIVIL ACTION NO. 12-2713-P**
VERSUS	**JUDGE FOOTE**
WARDEN BURL CAIN	**MAGISTRATE JUDGE HORNSBY**

J U D G M E N T

IT IS ORDERED that Petitioner's application for writ of habeas corpus be **DENIED AND DISMISSED WITH PREJUDICE**, sua sponte, because it is time-barred by the one-year limitation period imposed by the AEDPA. The Report and Recommendation [Record Document 15] entered by Magistrate Judge Hornsby states, "[t]he Petitioner could have discovered through the exercise of due diligence prior to the expiration of the one-year limitation period the factual predicate of his claim since he knew in 2004 that there was another eyewitness." Thus, the Report and Recommendation states that Petitioner cannot rely upon 28 U.S.C. § 2244(d)(1)(D) to make his application timely.

The Court does not make a ruling regarding the date Petitioner could have discovered through the exercise of due diligence the factual predicate of his claim. Nevertheless, Petitioner has failed to meet his burden to justify the application of 28 U.S.C. § 2244(d)(1)(D) to make his application timely. Petitioner has not given sufficient reasons for Petitioner's delay in discovering "the factual predicate of the claim or claims presented" or established the relevance and substance of the "factual predicate" he attempts to put forward. Accordingly, Petitioner's application for writ of habeas corpus is time-barred by the limitation period imposed by the AEDPA. Magistrate Judge Hornsby's Report and Recommendation [Record

Document 15] is adopted in all other respects.

Rule 11 of the Rules Governing Section 2254 Proceedings for the U.S. District Courts requires the district court to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. The court, after considering the record in this case and the standard set forth in 28 U.S.C. § 2253, denies a certificate of appealability because the applicant has not made a substantial showing of the denial of a constitutional right.

THUS DONE AND SIGNED, in chambers, in Shreveport, Louisiana, on this ~~18th~~ 24 day of March 2015.

ELIZABETH ERNY FOOTE
UNITED STATES DISTRICT JUDGE