

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SPENCER HOGAN #177111,

Petitioner,

v.

SHIRLEE HARRY,

Respondent.

Case No. 08-cv-15087

HONORABLE STEPHEN J. MURPHY, III

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

This matter has come before the Court on the Report and Recommendation (“R & R”) of Magistrate Judge Paul J. Komives. Docket no. 12. Magistrate Judge Komives recommends in his report that the Court grant Respondent’s motion to dismiss (docket no. 6), find that Petitioner’s petition for writ of habeas is barred by the statute of limitations, dismiss his petition, and deny petitioner a certificate of appealability.

A District Court’s standard of review for a magistrate judge’s R & R depends on whether any party filed objections to the R & R. With respect to portions of an R & R that no party has objected to, the Court need not undertake any review at all. *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). Further, the failure to file specific objections to an R & R constitutes a waiver of any further right of appeal from the district judge’s adoption of the R & R. See *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981).

The last pages of the magistrate judge’s R & R notified all parties that any objections were to be filed within fourteen days of service of a copy of the R & R, as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). See also *Walters*, 638 F.2d at 950

("we hold that a party shall be informed by the magistrate that objections must be filed within ten days or further appeal is waived.")

No objections have been filed and the time for filing them has passed, so the Court need not conduct any review of the R & R and may simply adopt it. Additionally, by not filing objections, Petitioner has waived his right to appeal the district court's order. See *Walters*, 638 F.2d at 950. Accordingly, the Court will adopt the R & R in full, grant Respondent's motion to dismiss, and conclude that Petitioner's petition for writ of habeas corpus is barred by the statute of limitations.

The Court also declines to issue Petitioner a certificate of appealability for the reasons stated in the R & R, and because by failing to file any objections to the R & R, Petitioner has waived his right to appeal the district court's order in the first place, so any attempt to appeal would be meritless. See *Walters*, 638 F.2d at 949-50.

WHEREFORE, it is hereby **ORDERED** that Magistrate Judge Komives's Report and Recommendation (docket no. 12) is **ADOPTED** in full, Respondent's motion to dismiss (docket no. 6) is **GRANTED**, Petitioner's petition for a writ of habeas corpus (docket no. 1) is **DISMISSED** as it is barred by the statute of limitations, and the Court declines to issue Petitioner a certificate of appealability.

SO ORDERED.

s/Stephen J. Murphy, III
Stephen J. Murphy, III
United States District Judge

Dated: December 23, 2009

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 23, 2009, by electronic and/or ordinary mail.

s/Alissa Greer
Case Manager