

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ASHTON ARNIZE SMITH,

Petitioner,

Civil Case No. 16-cv-14513

v.

Honorable Linda V. Parker

SHAWN BREWER,

Respondent.

**OPINION AND ORDER DENYING WITHOUT PREJUDICE
PETITIONER'S MOTION FOR EQUITABLE TOLLING**

Petitioner Ashton Arnize Smith (“Petitioner”), confined at the Cotton Correctional Facility in Jackson, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in 2010 for second-degree murder, assault with intent to do great bodily harm less than murder, and felony firearm. The Court has ordered Respondent to file an answer to the petition on or before July 10, 2017. With his application for habeas relief, Petitioner filed a motion for equitable tolling. Because the motion is premature, the Court is denying it without prejudice.

In his motion, Petitioner asks the Court to equitably toll the one-year statute of limitations applicable to federal habeas petitions. *See* 28 U.S.C. § 2244(d). At this juncture, however, the statute of limitations is not an issue in this case.

Respondent has not filed an answer to the petition, and thus may decide not to raise a statute of limitations defense. While the Court may raise the limitations issue on its own motion, it is under no obligation to do so. *See Day v. McDonough*, 547 U.S. 198, 209 (2006). If the Court chose to raise the limitations issue, it would be required to provide notice to Petitioner and an opportunity to respond to the limitations question. *Id.* at 210-11.

Until Respondent or this Court raises the limitations issue, Petitioner's request for equitable tolling is premature. Petitioner may reassert any arguments he has made in favor of equitable tolling *if* the issue is raised.

Accordingly,

IT IS ORDERED that Petitioner's motion for equitable tolling (ECF No. 2) is **DENIED WITHOUT PREJUDICE**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: April 4, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, April 4, 2017, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager