

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE MICHAEL GRESHAM,

Petitioner,

v.

CINDI CURTIN,

Respondent.

CASE NO. 1:13-CV-1039

HON. ROBERT J. JONKER

ORDER RE REPORT AND RECOMMENDATION

This matter is before the Court on Petitioner George Gresham's Objection (docket #8) to Magistrate Judge Hugh W. Brenneman's Report and Recommendation (docket #6) and Petitioner's subsequent "motion for equitable tolling" (docket #11). When a party objects to a magistrate judge's report and recommendation, the "district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the magistrate judge that is relevant to the findings under attack. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the magistrate judge, the Report and Recommendation, Petitioner's Objection, and his "motion for equitable tolling." The magistrate judge recommended denying Petitioner's petition for failure to satisfy the applicable statute of limitations. Petitioner objects that he did not receive notice of a state court's denial of his state motion for collateral relief in a timely fashion and he is entitled to equitable tolling.

Petitioner's "motion for equitable tolling" presents new evidence not considered by the magistrate judge, including an order dated November 4, 2013 by the state court withdrawing and amending the original September 20, 2012 order denying Petitioner's motion for collateral relief. This amendment may affect the timeliness of Petitioner's federal habeas motion. The Court concludes that it is preferable to decide the issue of equitable tolling on a complete record. The Court therefore **DECLINES TO ACCEPT** the Report and Recommendation and **REFERS** the matter to the magistrate judge for further consideration of the evidence presented in Petitioner's Objection and "motion for equitable tolling."

IT IS SO ORDERED.

Dated: February 27, 2014

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE