

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE MICHAEL GRESHAM,

Petitioner,

Case No. 1:13-CV-1039

v.

HON. ROBERT J. JONKER

CINDI CURTIN,

Respondent,

ORDER
APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge’s Report and Recommendation (docket # 15) filed on August 4, 2014. Petitioner filed his objections to the Report and Recommendation (docket # 17) on August 22, 2014. There are two other pending motions before the Court: Petitioner’s motion for equitable tolling (docket # 11), and Petitioner’s motion to stay judgment (docket # 20).

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified. 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge’s disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *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 itself; and Petitioner's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct. The Court agrees with the Magistrate Judge's equitable tolling analysis and recommendation that Petitioner's motion recommendations for dealing with a petition like this one.

Petitioner also brings a Motion to Stay Judgment (docket # 20) while he seeks further proceedings in the state courts. This motion does not change the fact that Petitioner's motion is barred by the one-year statute of limitations, and therefore will be denied.

Under 28 U.S.C. § 2253(c)(2), the Court must also determine whether a certificate of appealability should be granted. A certificate should issue if a petitioner has demonstrated "a substantial showing of a denial of a constitutional right." *Id.* The Sixth Circuit has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy*, 263 F.3d at 467. Consequently, this Court has examined Gresham's claims under the *Slack* standard. Under *Slack*, to warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 529 U.S. at 484. For the reasons stated above, the Court finds that reasonable jurists could not find

that this Court's dismissal of Gresham's claims was debatable or wrong. Thus, the Court will deny Gresham a certificate of appealability.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket #15) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that:

1. Petitioner's Motion to Stay (docket # 3) is **DENIED**.
2. Petitioner's Motion for Equitable Tolling (docket # 11) is **DENIED**.
3. Petitioner's Motion to Stay Judgment (docket # 20) is **DENIED**.
4. Petitioner is **DENIED** a certificate of appealability.

A separate judgment will issue.

IT IS SO ORDERED.

Dated: September 5, 2014

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