

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DAVID LEE SMITH, # 10445

v.

RON KING

§
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§
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PETITIONER

CIVIL ACTION NO. 1:09cv738-LG-RHW

RESPONDENT

**ORDER ADOPTING IN PART AND
MODIFYING IN PART REPORT AND RECOMMENDATION**

This cause comes before the Court on the Report and Recommendation [6] of United States Magistrate Judge Robert H. Walker, entered in this cause on January 11, 2010, in which he recommends granting Respondent Ronald King's [5] Motion to Dismiss the Petition for Writ of Habeas Corpus [1] as time-barred. Petitioner David Lee Smith has not filed objections to the Magistrate Judge's recommendations.

The Court finds that the Magistrate Judge properly recommended that the Petition be dismissed as time-barred. The only amendment the Court would make to the findings is that Smith was sentenced on June 14, 2006, which means that his conviction was final on July 14, and he had until Monday, July 16, 2007, in which to file for habeas relief. This amendment has no impact on the conclusion that his habeas petition, filed October 1, 2009, is barred by the one-year statute of limitations. After referral of hearing by this Court, no objections having been filed as to the Report and Recommendation, and the Court, having fully reviewed the same as well as the record in this matter, and being duly advised in the premises, finds that the Report and Recommendation should be adopted in part and modified in part as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and

Recommendation [6] of United States Magistrate Judge Robert H. Walker, entered on January 11, 2010, be, and the same hereby is, adopted as the finding of this Court, subject only to the modification discussed above.

IT IS FURTHER ORDERED AND ADJUDGED that Ron King's [5] Motion to Dismiss is **GRANTED**. The [1] Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254 is **DISMISSED**. A separate judgment will be entered herein in accordance with this Order as required by FED. R. CIV. P. 58.

SO ORDERED AND ADJUDGED this the 2nd day of June, 2010.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE