

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

KENNETH READUS, #103125

PETITIONER

VS.

CIVIL ACTION NO. 3:10-cv-442-WHB-LRA

EMMITT SPARKMAN

RESPONDENT

OPINION AND ORDER

This cause is before the Court on the Report and Recommendation of United States Magistrate Judge Linda R. Anderson. After considering the Report and Recommendation¹ and the other pleadings in this case, the Court finds it should be adopted as the finding of this Court.

I. Discussion

On August 11, 2010, Petitioner, Kenneth Readus ("Readus"), filed a Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody ("Petition").² Thereafter, Respondent, Emmitt Sparkman ("Sparkman"), filed a motion seeking dismissal of the Petition on the basis that it was untimely. On

¹ The parties were required to file objections to the Report and Recommendation on or before November 15, 2010. On Petitioner's motion, the deadline for filing objections was extended to December 8, 2010. No objections have been filed.

² As Readus is proceeding in this case *pro se*, the allegations in his pleadings have been liberally construed. See United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994).

review, Judge Anderson entered a Report and Recommendation ("R & R") recommending that the Petition be dismissed as untimely. See R & R [Docket No. 5]. In the R & R, Judge Anderson found that to be timely under the Anti-Terrorism and Effective Death Penalty Act, codified at 28 U.S.C. § 2244(d), Readus was required to file his Petition for federal habeas relief on or before April 8, 2010. See R & R, at 4. As Readus's Petition was not filed until August 11, 2010, Judge Anderson found, and this Court agrees, that the Petition was time barred. See 28 U.S.C. § 2244(d) (providing persons in custody pursuant to a state court judgment a one-year period in which to seek federal habeas corpus relief). Judge Anderson also found, and again this Court agrees, that there was no showing that Readus had been pursuing his rights diligently or that extraordinary circumstances had prevented him from timely filing his Petition.

After reviewing the Petition and the R & R, the Court agrees that the Petition is time barred and should be dismissed for that reason. Accordingly, the Court will adopt Judge Anderson's R & R recommending dismissal of this case.

For the foregoing reasons:

IT IS THEREFORE ORDERED that the November 1, 2010, Report and Recommendation of United States Magistrate Judge Linda R. Anderson [Docket No. 5], which recommends dismissal of this case, is hereby adopted as the finding of this Court.

IT IS FURTHER ORDERED that the Motion of Respondent to Dismiss [Docket No. 4] is hereby granted. A Final Judgment dismissing this case shall be entered this day.

IT IS FURTHER ORDERED that a Certificate of Appealability should not issue. Petitioner has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED this the 16th day of December, 2010.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE