

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JERRY LEE WARNER, #84411

PETITIONER

VS.

CIVIL ACTION NO. 3:13CV200TSL-JMR

RONALD KING

RESPONDENT

ORDER

This cause is before the court on the objection of petitioner Jerry Lee Warner to the magistrate judge's report and recommendation entered on October 18, 2013. Having reviewed petitioner's submission, the court now concludes that petitioner's objection¹ is without merit and hereby adopts, as its own opinion, the magistrate judge's report and recommendation.

Based on the foregoing, it is ordered that the report and recommendation of United States Magistrate Judge John M. Roper

¹ By his objection, Warner appears to assert that the statute of limitations should be equitably tolled because he only recently became aware that his trial/appellate counsel withdrew her representation after the notice of appeal was filed but before the Mississippi Court of Appeals affirmed his appeal. Assuming for the sake of argument that Warner was unaware of counsel's withdrawal, he has failed to explain how this lack of knowledge thwarted his ability to timely seek habeas relief in this court. Holland v. Florida, ---U.S. ----, 130 S. Ct. 2549, 2561, 177 L. Ed. 2d 130 (2010) (habeas petitioner is entitled to equitable tolling only if he shows " '(1) that he ha[d] been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing") (quoting Pace v. DiGuaglielmo, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005)). Accordingly, he has failed to demonstrate that the statute of limitations should be tolled.

entered on or about October 18, 2013, be, and the same is hereby,
adopted as the finding of this court.

SO ORDERED this 14th day of November, 2013.

/s/Tom S. Lee
UNITED STATES DISTRICT JUDGE