

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CORNELIUS CANNADY, #T4697

PETITIONER

V.

CIVIL ACTION NO. 3:22-CV-130-KHJ-BWR

BRAND HUFFMAN

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation (“Report”) of United States Magistrate Judge Bradley W. Rath. [17]. The Report recommends: granting Respondent Brand Huffman’s [11] Motion to Dismiss; dismissing with prejudice Petitioner Cornelius Cannady’s Petition for Habeas Relief under 28 U.S.C. § 2254; and denying Cannady’s requests for an evidentiary hearing and appointment of counsel. [17] at 24–25. Written objections to the Report were due by November 10, 2022. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. *Id.*

When no party has objected to a magistrate judge’s report and recommendation, the Court need not review it *de novo*. 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). Instead, the Report is reviewed under the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Cannady seeks habeas relief, contending, among other things, he is actually innocent, his sentence is illegal, and he received ineffective assistance of trial and appellate counsel. Huffman moved to dismiss Cannady's petition as time-barred under the Antiterrorism and Effective Death Penalty Act of 1996's ("AEDPA") one-year statute of limitations. *See* 28 U.S.C. § 2244(d); Sup. Ct. R. 13.1. The Magistrate Judge recommends dismissing the petition with prejudice because Cannady filed it after the limitations period expired, and no statutory or equitable tolling applies. Moreover, the Magistrate Judge recommends Cannady failed to demonstrate he is entitled to an evidentiary hearing under 28 U.S.C. § 2254(e)(2), or appointment of counsel. Cannady did not object to the Report. The Report is neither clearly erroneous nor contrary to law. Accordingly, it is adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the [17] Report and Recommendation of United States Magistrate Judge Bradley W. Rath is adopted as the opinion of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Respondent's [11] Motion to Dismiss is GRANTED, Petitioner's request for an evidentiary hearing is denied, *see* [1] at 15, and this case is DISMISSED with prejudice.

The Court concludes also that a certificate of appealability ("COA") shall not issue. To obtain a COA, Cannady must show "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court

was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). Cannady satisfies the first prong, but he fails to meet the second.

A separate Final Judgment will issue this day.

SO ORDERED, this the 21st day of November, 2022.

s/ *Kristi H. Johnson*
UNITED STATES DISTRICT JUDGE