

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

ALVIN LEE JOHNSON

PETITIONER

V.

CIVIL ACTION NO. 5:23-cv-34-DCB-MTP

SUPERINTENDENT BRAND HUFFMAN

RESPONDENT

ORDER ADOPTING REPORT & RECOMMENDATION

THIS MATTER is before the Court on Magistrate Judge Parker's Report and Recommendation ("Report") [ECF No. 14] concerning Superintendent Brand Huffman ("Respondent")'s Motion to Dismiss ("Motion"). [ECF No. 12]. The Report was entered on April 16, 2024, and objections to it were due by April 30, 2024. No party has filed an objection, and the time to do so has elapsed.

Respondent filed its Motion alleging that the Petition [ECF No. 1] for Writ of Habeas Corpus is barred by the one-year statute of limitations under 28 U.S.C. § 2244(d). Alvin Lee Johnson ("Petitioner") did not respond, and the time to do so elapsed. After considering the Motion, the record, and relevant legal authority, Judge Parker determined that the Petition is time-barred under 28 U.S.C. § 2244(d) and recommended that the Court grant Respondent's Motion and dismiss the case with prejudice. [ECF No. 14] at 12. Specifically, the Report found that Petitioner's conviction became final on August 29, 2017, the Petition was accordingly due on August 29, 2018, the Petition was

filed four years later on April 26, 2023, and Petitioner is neither entitled to statutory nor equitable tolling under 28 U.S.C. § 2244(d)(1)(A). [ECF No. 14] at 4-6. Judge Parker further determined that Petitioner failed to show new or reliable evidence such that no reasonable juror would conclude he is guilty. [ECF No. 14] at 7-11.

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of it. 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 or recommendations to which objection is made."). Where there are no objections, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review to the Report. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having considered the Report, the Court agrees with Judge Parker's recommendation. Accordingly, the Report is ADOPTED. Respondent's Motion is GRANTED and the Petition is hereby DISMISSED WITH PREJUDICE.

A Final Judgment shall be entered of even date herewith pursuant to Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED, this 8th day of May, 2024.

/s/ David Bramlette
DAVID C. BRAMLETTE III
UNITED STATES DISTRICT JUDGE