

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

IRVIN LEE GAMBLIN,)	
)	
Petitioner,)	
)	
v.)	No. 4:10CV00243 ERW
)	
JILL MCGUIRE,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon review of petitioner’s response to the order to show cause.¹ Having carefully reviewed movant’s response, the Court concludes that his arguments are without merit and that the instant action is time-barred under 28 U.S.C. § 2244.

Petitioner argues that his untimely filing should be exempted from the statute of limitations set forth in § 2244 because he is “actually innocent” of the crimes which he was convicted. Specifically, petitioner asserts that his lawyer advised him to enter a guilty plea even though he was innocent of the crime for which he was charged.

¹On March 3, 2010, the Court ordered petitioner to show cause as to why the Court should not dismiss his petition for writ of habeas corpus as time-barred.

Although a showing of actual innocence may excuse an untimely filing, the petitioner has “to show some action or inaction on the part of respondent that prevented him from discovering the relevant facts in a timely fashion, or at the very least, that a reasonably diligent petitioner could not have discovered these facts in time to file a petition within the period of limitations.” Flanders v. Graves, 299 F.3d 974, 978 (8th Cir. 2002). Petitioner has failed to offer any explanation of how his allegedly false guilty plea, which was apparently known to him at the time he entered the plea, prevented him from filing a petition for writ of habeas corpus in a timely fashion.

Accordingly,

IT IS HEREBY ORDERED that petitioner’s application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** as time-barred.

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 21st day of April, 2010.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE