

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Kevin (Kelly) Grant Gearhart

v.

Case No. 18-cv-104-PB

Helen E. Hanks, Commissioner of  
New Hampshire Department of CorrectionsORDER

No objection having been filed, I herewith approve the Report and Recommendation of Magistrate Judge Andrea K. Johnstone dated April 27, 2018, and grant respondent's motion to dismiss (Doc. No. 8) and deny as moot both Gearhart's petition (Doc. No. 1) and her motion (Doc. No. 5) as to the statute of limitations. "[O]nly those issues fairly raised by the objections to the magistrate's report are subject to review in the district court and those not preserved by such objection are precluded on appeal.'" School Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010) (quoting Keating v. Secretary of Health & Human Servs., 848 F.2d 271, 275 (1st Cir.1988)); see also United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986) (after proper notice, failure to file a specific objection to magistrate's report will waive the right to appeal). Additionally, finding that the petitioner has failed to make a substantial showing of the denial of a

constitutional right, the court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Rule 11, Rules Governing Habeas Corpus Cases Under Section 2254; First Cir. LR 22.0.

/s/ Paul Barbadoro  
Paul Barbadoro  
United States District Judge

Date: May 23, 2018

cc: Kelly Gearhart, pro se  
Elizabeth C. Woodcock, Esq.