

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TYRONE CRAIG,

Petitioner,

**9:15-cv-384
(GLS/CFH)**

v.

WILLIAM J. CONNOLLY,

Respondent.

APPEARANCES:

OF COUNSEL:

FOR THE PETITIONER:

Tyrone Craig
Pro se
12-A-4260
Otisville Correctional Facility
Box 8
Otisville, NY 10963

FOR THE RESPONDENT:

HON. ERIC SCHNEIDERMAN
New York State Attorney General
120 Broadway
New York, NY 10271

LISA E. FLEISCHMANN
Assistant Attorney General

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report-Recommendation and Order (R&R) by Magistrate Judge Christian F.

Hummel, duly filed on December 7, 2016. (Dkt. No. 17.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.¹

Petitioner objects to the R&R's recommendation that the petition be dismissed as untimely. (Dkt. No. 20.) Notably, despite being put on notice of respondent's intention to assert that the petition is time barred and afforded time to respond to respondent's arguments along those lines, petitioner failed to present anything for Judge Hummel's consideration of the issue. (Dkt. Nos. 11, 12, 13, 14.) In his objections, petitioner argues, in conclusory fashion, that Judge Hummel's recommendation is simply wrong. (Dkt. No. 20.) Because the arguments contained in petitioner's objections are raised for the first time now, they are not entitled to any review, although the court may, in its discretion, review under any standard it sees fit, *Tatta v. Wright*, 616 F. Supp. 2d 308, 312 (N.D.N.Y. 2007). Exercising some deference, and applying either *de novo* or the clearly erroneous standard of review, the court adopts the R&R for exactly the

¹ Petitioner's letter request for additional time to file objections, dated December 29, 2016, (Dkt. No. 21), is denied as moot in light of the extension of time afforded petitioner on January 4, 2017, (Dkt. No. 19), and the fact that he filed objections to the R&R in a document dated December 30, 2016, (Dkt. No. 20).

reasons expressed therein. (Dkt. No. 17 at 5-9.) The petition is clearly untimely and petitioner has neither demonstrated that he is entitled to equitable tolling nor made out a gateway claim of actual innocence to excuse his failure to timely file. (*Id.*)

Accordingly, it is hereby

ORDERED that the Report-Recommendation and Order (Dkt. No. 17) is **ADOPTED** in its entirety; and it is further

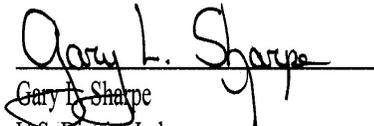
ORDERED that the petition (Dkt. No. 1) is **DISMISSED** and **DENIED**; and it is further

ORDERED that, because petitioner has failed to make a substantial showing of the denial of a constitutional right, no certificate of appealability shall issue pursuant to 28 U.S.C. § 2253(c)(2); and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the court's Local Rules.

IT IS SO ORDERED.

January 26, 2017
Albany, New York



Gary L. Sharpe
U.S. District Judge