

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

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**TYRONE CRAIG,**

**Petitioner,**

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

**v.**

**WILLIAM J. CONNOLLY,**

**Respondent.**

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**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.<sup>1</sup>

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

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<sup>1</sup> 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

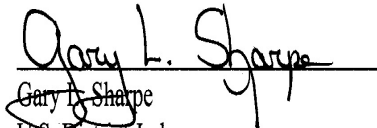
**ORDERED** that the petition (Dkt. No. 1) is **DISMISSED** and **DENIED**; and it is further

**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

  
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Gary L. Sharpe  
U.S. District Judge