

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Terry D. Ramsey,

Petitioner,

-vs-

Leeann Bertsch, Director, NDDOCR,
Wayne Stenehjem, NDAG, and State of
North Dakota,

Respondents.

Case No. 3:14-cv-73

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Pursuant to 28 U.S.C. § 636, the court has received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge, recommending that respondents' motion to dismiss be granted and petitioner's petition for habeas relief be dismissed with prejudice.¹ Petitioner Terry D. Ramsey ("Ramsey") has filed an objection to the Report and Recommendation.² Ramsey reiterates his innocence, but presents no additional evidence.

The court has conducted a *de novo* review of the record. Contrary to Ramsey's assertions, the evidence in the record is not such that a jury would "certainly find [him] innocent beyond a reasonable doubt." The victim's recantation letter postmarked May 4, 2011 is, as noted by the state courts and the magistrate judge, tenuous. Moreover, one might reasonably question the reliability of the victim's affidavits, particularly the last affidavit, asserting no abuse occurred, which is in a form more consistent with assistance

¹ Doc. #13.

² Doc. #16.

from Ramsey's father.

On this record, Ramsey's claims are time-barred and he has failed to make a showing for equitable tolling. Although a petitioner may proceed with claims that would otherwise be time-barred if he demonstrates actual innocence, Ramsey has failed to provide sufficient credible evidence of actual innocence. Accordingly, the court hereby adopts the Report and Recommendation in its entirety. For the reasons stated therein, the respondents' motion to dismiss is **GRANTED** and Ramsey's petition for habeas relief is **DISMISSED** with prejudice.

The court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*. Based upon the entire record, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by the court.³ If Ramsey desires further review, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 30th day of March, 2015.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court

³ Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997).