

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

My Van Tran,)	CASE NO. 1:16 CV 637
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
Bobby Bogan, Jr., Warden,)	<u>Memorandum of Opinion and Order</u>
)	
)	
Respondent.)	

INTRODUCTION

This matter is before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. (Doc. 18), which recommends dismissal of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner has not filed objections to the Report and Recommendation. For the reasons that follow, the Report and Recommendation is ACCEPTED.

STANDARD OF REVIEW

When objections are made to a Magistrate Judge’s Report and Recommendation, the district court reviews the case *de novo*. Federal Rule of Civil Procedure 72(b) provides in pertinent part:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

As stated in the Advisory Committee Notes, "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." In *Thomas v. Arn*, 474 U.S. 140, 150 (1985), the Court held, "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."

DECISION

Magistrate Judge Baughman concluded that Petitioner filed his petition outside the one-year statute of limitations for filing habeas petitions set forth in 28 U.S.C. § 2244(d). He further concluded that Petitioner was not entitled to statutory or equitable tolling and that he did not meet the demanding standard for establishing a claim of actual innocence. This Court, having reviewed the Report and Recommendation and finding no clear error, accepts the Magistrate Judge's Report and Recommendation. In accordance with that recommendation, the Court hereby denies the Petition for Writ of Habeas Corpus for the reasons stated by the Magistrate Judge in the Report and Recommendation, which is incorporated herein by reference. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Court
Chief Judge

Dated: 9/25/17