

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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TAG R. KECKLER,

Petitioner,

v.

MARC DANN, *et al.*

Respondents.

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CASE NO. 3:08-CV-170

OPINION & ORDER  
[Resolving Doc. Nos. [1](#), [12](#), & [13](#).]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On January 18, 2008, *pro se* Petitioner Tag R. Keckler filed a petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2254](#). [Doc. [1](#).] With his petition, Keckler seeks relief from the five-year sentence that an Ohio state court imposed following his guilty plea to one count of endangering children. [[Id.](#)]

Keckler advances two arguments to support his petition. [[Id.](#) at 5, 7.] First, he says that the Ohio state court’s sentence was illegal. [[Id.](#)] Second, he contends that his trial counsel was ineffective. [[Id.](#)]

The State of Ohio opposes Keckler’s motion. [Doc. [12](#).] First, the State argues that Keckler’s petition is time-barred because he failed to file his petition within [28 U.S.C. § 2244\(d\)](#)’s one-year statute of limitations. [[Id. at 4-11](#).] Second, the State argues that Keckler failed to exhaust his claims in state court. [[Id. at 11-13](#).] Finally, the State argues that Keckler’s claims are meritless. [[Id. at 13-15](#).]

Case No. 3:08-CV-170  
Gwin, J.

On August 6, 2009, Magistrate Judge William H. Baughman, Jr. filed a Report and Recommendation that recommended the Court deny Keckler's § 2254 petition as time-barred. [Doc. [13](#).] The Magistrate Judge found that Keckler's sentence became final as a matter of Ohio law on September 17, 2006 because he failed to appeal within 30 days of his sentencing on August 18, 2006. [*Id.* at 7.] As a result, under [28 U.S.C. § 2244](#)'s one-year limitations period, Keckler had until September 17, 2007 to file his federal habeas petition. [*Id.*] Keckler did not, however, file this petition until January 18, 2008. [Doc. [1](#) at 1.]

Moreover, the Magistrate Judge found that Keckler could not avail himself of statutory or equitable tolling of § 2244's limitations period. [Doc. [13](#) at 7-9.] The Magistrate Judge held that statutory tolling was unavailable because Keckler did not file his motion for leave to file a delayed appeal until September 26, 2007, after § 2244's limitations period had run.<sup>1/</sup> [*Id.* at 7-8.] The Magistrate Judge also found that Keckler failed to show any factual basis for equitable tolling. [*Id.* at 8-9.]

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which a party has objected. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). A party must file any objections to a Report and Recommendation within ten days of service. *Id.* Failure to object within this time waives the party's right to appeal the magistrate judge's recommendation. [Fed. R. Civ. P. 72\(a\)](#); see also [Thomas v. Arn](#), 474 U.S. 140, 145

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<sup>1/</sup>Although Petitioner dated his motion August 31, 2007, the Ohio appellate court did not receive it until September 26, 2007. [Doc. 12, [Ex. 6](#).] Ohio law deems the date of a motion's receipt—not mailing—to be the date of filing. See [State ex rel. Tyler v. Alexander](#), 555 N.E.2d 966, 967-68 (Ohio 1990); see also [Vroman v. Brigano](#), 346 F.3d 598, 603-04 (6th Cir. 2003). Thus, Petitioner filed his motion too late to toll § 2244's limitations period. Moreover, a motion for state post-conviction relief cannot resurrect § 2244's limitations period once it has expired. See, e.g., [Searcy v. Carter](#), 246 F.3d 515, 519 (6th Cir. 2001).

Case No. 3:08-CV-170  
Gwin, J.

[\(1985\)](#); [Souter v. Jones, 395 F.3d 577, 585 \(6th Cir. 2005\)](#). Absent objection, a district court may adopt the magistrate's report without review. See [Thomas, 474 U.S. at 149](#). In any event, having conducted its own review of the parties' briefs on the issue, the Court agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court **ADOPTS** in whole Magistrate Judge Baughman's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **DENIES** Petitioner Keckler's § 2254 petition. Further, the Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that Petitioner could not take an appeal from this decision in good faith, and no basis exists on which to issue a certificate of appealability. [28 U.S.C. § 2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).

IT IS SO ORDERED.

Dated: August 25, 2009

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE