

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ALI ABDUL HAKIM,)	CASE NO. 3:13 CV 969
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
vs.)	MAGISTRATE JUDGE
)	WILLIAM H. BAUGHMAN, JR.
KEVIN JONES,)	
)	
Respondent.)	MEMORANDUM OPINION

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. (ECF #39). The Report and Recommendation is hereby ADOPTED. Petitioner's request for equitable tolling (ECF #36) is GRANTED. The State's motion to dismiss (ECF #11) is DENIED. On May 24, 2016, Petitioner Ali Abdul Hakim filed a brief in support of equitable tolling (ECF #36). Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge William H. Baughman, Jr.

On May 30, 2017, the Magistrate Judge issued his Report and Recommendation. Magistrate Judge Baughman recommended that Petitioner's request for equitable tolling be granted and the State's motion to dismiss be denied because Petitioner made a showing that he "has been pursuing his rights diligently" but that "some extraordinary circumstance stood in his way." (ECF #39). The Respondent timely filed objections to the Magistrate's Report. (ECF # 40).

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo. FED R. CIV.

P. 72(b) states:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b)(3) addresses only the review of portions of reports to which timely objections have been made; it does not indicate the appropriate standard of review for portions of the report to which no objections have properly been made. The Advisory Committee on Civil Rules commented on the standard of review stating "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." Fed. R. Civ. P. 72 advisory committee's notes (citations omitted).

The U.S. Supreme Court stated: "It does not appear that Congress intended to require district court review of magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to these findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Conclusion

The Court has reviewed *de novo* those portions of the Magistrate Judge's Report and Recommendation to which objections have been made. The Court finds Magistrate Judge Baughman's Report and Recommendation to be thorough, well-written, well-supported, and correct. The Court finds that Respondent's objections raise no arguments (factual or legal) that have not been

fully addressed by the Magistrate's Report and Recommendation.

As the Magistrate Judge found, Petitioner has met his burden of showing that he was diligent in pursuing his rights to file for a delayed appeal with the Supreme Court of Ohio, and that there were extraordinary circumstances beyond Petitioner's control that prevented him from filing that motion. Petitioner supported his brief for equitable tolling with sufficient evidence to show that the actions of the prison mail room prevented him from filing a timely appeal. Thus, Petitioner is entitled to equitable tolling and Petitioner's federal habeas petition is timely.

Accordingly, within 23 days of the receipt of this memorandum opinion, the Attorney General shall respond to Petitioner's petition for habeas corpus. Petitioner shall have thirty (30) days from the filing of respondent's answer to respond hereto.

The Report and Recommendation of Magistrate Judge Baughman (ECF #39) is ADOPTED. Petitioner's request for equitable tolling (ECF # 36) is GRANTED. The State's motion to dismiss (ECF #11) is DENIED.

IT IS SO ORDERED



DONALD C. NUGENT
United States District Court

DATED: September 18, 2017