

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Harry Krouskoupf, :
 :
 Petitioner : Civil Action 2:08-cv-00367
 :
 v. : Judge Holschuh
 :
 Warden Noble Correctional Institution : Magistrate Judge Abel
 :
 Respondent :

ORDER

Petitioner Krouskoupf's September 28, 2009 objections to the August 6, 2009 Report and Recommendation that his habeas corpus petition be dismissed because it is barred by the statute of limitations are OVERRULED.

Petitioner failed to file timely objections, and the Court entered judgment dismissing the petition September 17, 2009. Further, there is no merit to the objections. Krouskoupf pleaded guilty June 18, 2005 to seven counts of breaking and entering, in violation of O.R.C. 2911.13(A), four counts of theft, in violation of O.R.C. 2913.02(A)(1), vandalism, in violation of O.R.C. 2909.05(B)(1)(a). On September 8, 2005 judgment was entered, sentencing him to an aggregate term of four years incarceration plus one year for violation of his post release control, such terms to be served consecutively. Krouskoupf did not appeal the sentence. Under 28 U.S.C. §2244(d), he had one-year from the date his convictions became final to file a federal habeas corpus petition. The convictions became final on October 8, 2005, when the time period expired to file a direct appeal. *See Searcy v. Carter*, 246 F.3d 515, 518-19 (6th Cir.2001); *Marcum v. Lazaroff*, 301 F.3d 480, 481 (6th Cir.2002);

Ohio App.R. 4(A). The statute of limitations expired one year later, on October 8, 2006.

This habeas corpus action was not filed until April 17, 2008, thus it is barred by the statute of limitations.

Petitioner argues in his objections that his delayed appeal tolled the running of the statute of limitations. However, Krouskoupf did not file his delayed appeal until May 29, 2007, after the statute of limitations had already run. As the Magistrate Judge found, appeals filed after the statute of limitations had expired do not toll or otherwise revive the running of the statute of limitations. *Vroman v. Brigano*, 346 F.3d 598, 601 (6th Cir.2003), citing *Rashid v. Khulmann*, 991 F.Supp. 254, 259 (S.D.N.Y.1998); *Winkfield v. Bagley*, 66 Fed.Appx. 578, unpublished, 2003 WL 21259699 (6th Cir. May 28, 2003)(same).

Date: September 29, 2009

/s/ John D. Holschuh
John D. Holschuh
United States District Judge