

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

Danny Thompson II,

Petitioner,

v.

Case No. 2:09-cv-601

Robin Knab, Warden,

Judge Michael H. Watson

Respondent.

OPINION AND ORDER

On July 27, 2009, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed as barred by the one-year statute of limitations under 28 U.S.C. §2244(d). Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

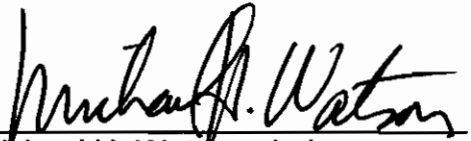
Petitioner objects to the Magistrate Judge's recommendation of dismissal of this action as time-barred. He states that, on February 9, 2009, he filed an appeal to the Ohio Supreme Court from the appellate court's dismissal of his post conviction appeal, and that on June 3, 2009, the Ohio Supreme Court dismissed his appeal. *See Exhibits to Objections*. Additionally, petitioner contends that the state appellate court dismissed his post conviction claims on the merits, and that his claims therefore warrant review in these proceedings. *See Objections*. However, contrary to petitioner's allegation here, the record reflects that the state appellate court affirmed the trial court's dismissal of petitioner's post conviction petition as untimely. *See Exhibits to Objections; State v. Thompson*, 2009 WL

119837 (Ohio App. 4th Dist. January 9, 2009). Therefore, as discussed by the Magistrate Judge, post conviction proceedings did not toll the running of the statute of limitations under 28 U.S.C. 2244(d)(2). *Allen v. Siebert*, 552 U.S. 3, 4 (2007).

Pursuant to 28 U.S.C. 636(b), this Court has conducted a de novo review of the Magistrate Judge's *Report and Recommendation*. For the reasons detailed therein, this Court likewise concludes that this action is time-barred. Therefore, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.


Michael H. Watson, Judge
United States District Court