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

TRAVIS JONES,

Petitioner,

v.

CASE NO. 2:09-CV-980
JUDGE MARBLEY
MAGISTRATE JUDGE KING

WARDEN, NOBLE CORRECTIONAL INSTITUTION,

Respondent.

OPINION AND ORDER

On July 6, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that respondent's motion to dismiss this action as barred by the one-year statute of limitations be granted. 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 again contends that he is actually innocent of the offense for which he stands convicted, despite his guilty plea; he requests the appointment of counsel and an evidentiary hearing in order to prove his innocence. Additionally, referring to *DiCenzi v. Rose*, 452 F.3d 465 (6th Cir. 2006),petitioner contends that the statute of limitations did not begin to run until June 23, 2009, the date that the Ohio Court of Appeals denied his motion for a delayed appeal. *See Objections*.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. Petitioner's objections are not well taken. As detailed by the Magistrate Judge, petitioner

has failed to offer new evidence demonstrating his actual innocence such that an evidentiary hearing or equitable tolling of the statute of limitations is warranted. Moreover, *DiCenzi v. Rose* does not support petitioner's contention that this action is timely, since petitioner does not allege that he was not advised of and did not know about his right to appeal; instead, petitioner asserts only that his attorney advised him that an appeal would not succeed.

Therefore, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter FINAL JUDGMENT in this action.

ALGENON L. MARBLEY
United States District Judge