

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

SHANE ROBINSON,

Petitioner,

CASE NO. 2:10-CV-0503
JUDGE HOLSCHUH

v.

WARDEN, MANSFIELD CORRECTIONAL
INSTITUTION,

Respondent.

OPINION AND ORDER

On June 9, 2010, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 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 **SUSTAINED**.

Petitioner indicates in his objections that he filed an appeal of the state appellate court's December 15, 2008, dismissal of his petition for post conviction relief to the Ohio Supreme Court. *See Exhibits A, B to Objections*. On June 3, 2009, the Ohio Supreme Court dismissed his appeal as not involving any substantial constitutional question. *Exhibit C to Objections*. This information was not contained in his initial petition. However, based on this information, petitioner's §2254 petition appears to be timely. Petitioner's post conviction petition tolled the running of the statute of limitations the time period during

which this action remained pending in the state courts, or until June 3, 2009. 28 U.S.C. §2244(d)(2). The petition reflects that petitioner signed his §2254 petition within one year of that date, on June 2, 2010. 28 U.S.C. 2254(d). Therefore, petitioner's objection to the dismissal of this action as time-barred is **SUSTAINED**.

Respondent is **DIRECTED** to make a return to the petition for a writ of habeas corpus which contains all of the information required by Rule 5 of the Rules governing Section 2254 Cases in the United States District Court and which attaches all of the materials required by that Rule. It shall also present Respondent's arguments as to why the writ should not be granted and whether an evidentiary hearing is needed under the criteria set forth in 28 U.S.C. §2254(e)(2).

It is **FURTHER ORDERED** that the Clerk of this Court serve a copy of the petition and this Order by mail on the respondent and on the Habeas Corpus United, Corrections Litigation Section, Office of the Attorney General, 150 East Gay Street, 16th Floor, Columbus, Ohio 43215.

IT IS SO ORDERED.

Date: June 25, 2010

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