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

ANTHONY K. BOLLING, :

Petitioner,

v. : Case No. 3:13-cv-116

JUDGE WALTER H. RICE

DONALD MORGAN, WARDEN

Respondent. :

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #6) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #11) IN THEIR ENTIRETY; OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. ##7, 12); SUSTAINING RESPONDENT'S MOTION TO DISMISS (DOC. #5); DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (DOC. #1) WITH PREJUDICE; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; CERTIFICATE OF APPEALABILITY AND ANTICIPATED MOTION FOR LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED; TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his July 2, 2013, Report and Recommendations (Doc. #6), and in his August 2, 2013, Supplemental Report and Recommendations (Doc. #11), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court ADOPTS said judicial filings in their entirety, and OVERRULES Petitioner's objections thereto (Docs. ##7 and 12). The Court SUSTAINS Respondent's Motion to Dismiss (Doc. #5), albeit for slightly

different reasons than those argued. The Petition for a Writ of Habeas Corpus (Doc. #1) is DISMISSED WITH PREJUDICE as time-barred.

In so holding, the Court notes that Petitioner still has not produced a copy of the November 16, 2010, Warrant for Removal for Resentencing that allegedly triggered notice of the factual predicate for his claim. *See* 28 U.S.C. § 2244 (d)(1)(D). But even assuming, *arguendo*, that the one-year statute of limitations did not begin running until that date, the Petition still was not timely filed. The statute of limitations ran for 76 days until January 31, 2011, when it was tolled upon Petitioner's filing of his motion to dismiss. It resumed running on April 18, 2012, when the Ohio Supreme Court declined review. *See* 28 U.S.C. § 2244(d)(2). The Petition was not filed until April 17, 2013, making it more than two months late.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability and any anticipated request for leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: August 22, 2013

WALTER H. RICE
UNITED STATES DISTRICT JUDGE