

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

DERRICK DEWAYNE PARKER,	)	
	)	
Petitioner,	)	
vs.	)	Case No. CIV-09-1075-HE
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner Derrick Parker seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and the Respondent, the State of Oklahoma, moves for dismissal on grounds of timeliness. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert E. Bacharach, who issued a Report and Recommendation recommending that the action be dismissed as untimely. Because petitioner has objected to the Report and Recommendation, the matter is reviewed *de novo*. 28 U.S.C. § 636 (b)(1)(C).

A petitioner has one year to file a federal habeas petition. 28 U.S.C. § 2244(d)(1). The Magistrate Judge concluded that the petitioner's one-year period began to run on the date his conviction became final, November 4, 1999, expiring one year later.<sup>1</sup> *Id.* § 2244(d)(1)(A). At the earliest, the petition here was filed on September 23, 2009, nearly nine

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<sup>1</sup>Petitioner argues that 28 U.S.C. § 2244(d)(1)(C) controls. That provision begins the one-year period on “the date which the constitutional right asserted was initially recognized . . . and made retroactively applicable to cases on collateral review.” Petitioner contends that his limitation period should begin from the issuance of *Oregon v. Ice*, \_\_ U.S. \_\_, 129 S.Ct. 711, 717–20 (2009). As the Magistrate Judge concluded, however, that case neither recognized a new constitutional right, nor is applicable in any way to the petitioner's circumstances.

years too late.

For substantially the same reasons as stated by the Magistrate Judge, the court concludes that the one-year limitation period applicable to petitioner's claim has expired and that no basis exists for statutory or equitable tolling. Accordingly, the court **ADOPTS** the Report and Recommendation, **GRANTS** the respondent's motion [Doc. No. 14], and **DISMISSES** the petition as untimely.

**IT IS SO ORDERED.**

Dated this 25th day of January, 2010.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE