

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

WARREN MONROE STEWART,)
)
Petitioner,)
vs.) NO. CIV-16-0837-HE
)
CARL BEAR, Warden,)
)
Respondent.)

ORDER

Petitioner Warren Monroe Stewart, a state prisoner appearing *pro se*, filed this action seeking habeas relief under 28 U.S.C. § 2254. This matter was referred to U.S. Magistrate Judge Charles B. Goodwin for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Judge Goodwin recommends the dismissal of the application on the basis it was filed outside the limitations period set out in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2244(d)(1). Petitioner filed a timely objection to the Report and Recommendation (the “Report”), prompting *de novo* review of the issues raised in the objection.

Under the AEDPA, a petition under § 2254 must be filed within one year from the date on which the judgment became final by an appeal or expiration of the time for appeal, subject to certain statutory tolling provisions. § 2244(d)(1). The Report concluded that petitioner’s judgment and sentence became final on May 2, 2011, which petitioner does not dispute. The Report further concluded that the limitations period was not tolled by either statutory provision or the doctrine of equitable tolling.

In his objection, petitioner asserts his ability to file the petition was impeded by state

action and that the tolling provision in § 2244(d)(1)(B) therefore applies. He claims he has been housed in a private prison which limits his law library access to three hours per week, that the law library is too small, it lacks necessary research materials and typewriters, and it is too far from a bathroom. However, § 2244(d)(1)(B) is directed to state-imposed impediments that violate the U.S. Constitution or laws, and the conditions alleged here do not rise to that level. Petitioner has not attempted to show how these deficiencies hindered his ability to file a petition for more than four years after his conviction became final, which is necessary to show he was deprived of meaningful access to the courts. Lewis v. Casey, 518 U.S. 343, 350–51 (1996). Similarly, for equitable tolling to apply, petitioner must show he has diligently pursued his claim, but was prevented from timely filing by extraordinary circumstances beyond his control. Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000). No such showing has been made.

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #8], a copy of which is attached to this order. The Petition for Writ of Habeas Corpus [Doc. #1] is **DISMISSED** as untimely. The court concludes that jurists of reason would not find this procedural issue debatable, and **DENIES** issuance of a Certificate of Appealability.

IT IS SO ORDERED.

Dated this 7th day of April, 2017.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE