

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK ECKLES,	:	
	:	
Petitioner,	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 06-1870
	:	
CHARLES ERICKSON, et al.,	:	
	:	
Respondents.	:	

ORDER

AND NOW, this 4th day of February, 2009, upon consideration of the Petition for the Writ of Habeas Corpus (the “Petition”) (Docket No. 3), the Amended Petition for the Writ of Habeas Corpus (Docket No. 24), the Report and Recommendation filed by United States Magistrate Judge L. Felipe Restrepo (Docket No. 25) and the Petitioner’s Objections (Docket No. 28), and after an independent review of the pertinent record, it is ORDERED that:

1. The Report and Recommendation of Magistrate Judge Restrepo is APPROVED and ADOPTED. The Court agrees with the Report and Recommendation that the Petition is time-barred under 28 U.S.C. § 2244(d)(1). There is no basis for this Court to accept Petitioner’s argument that the one year statute of limitations period was tolled under 28 U.S.C. § 2244(d)(1)-(2) to include the May 3, 2006 filing date. Further, Petitioner’s argument that the new evidence he discovered tolls the statute of limitations is also unpersuasive because he first learned of this evidence five years prior to filing the Petition and did not raise this argument during his pending state petition.

2. The Petition for the Writ of Habeas Corpus (Docket No. 1) is DENIED.

3. All outstanding motions, including the Motion for Post Trial Discovery (Docket No. 22), are DENIED as moot.
4. A certificate of appealability shall not issue because, for the reasons set forth in the Report and Recommendation, a reasonable jurist could not conclude that the Court is incorrect in denying and dismissing the habeas petition.
5. The Clerk's Office shall close this case.

BY THE COURT:

/s/ Joel H. Slomsky, J.
JOEL H. SLOMSKY, J.