

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES RONALD MILLS, JR.,	:	
	:	
Petitioner	:	CIVIL ACTION NO 3:17-2287
	:	
v.	:	(JUDGE MANNION)
	:	
COMMONWEALTH OF PENNSYLVANIA, <u>et al.</u>,	:	
	:	
Respondent	:	
	:	

ORDER

Pending before the court is the report of United States Magistrate Judge William I. Arbuckle which recommends that the instant petition for writ of habeas corpus be dismissed as untimely. (Doc. 5). No objections have been filed to the report. Upon review, Judge Arbuckle's report and recommendation will be adopted in its entirety.

The petitioner filed the instant petition for writ of habeas corpus on December 12, 2017, in which he challenges his conviction in the Potter County Court of Common Pleas. (Doc. 1). Judge Arbuckle reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. §2254, and ordered the petitioner to show cause as to why his petition should not be summarily dismissed because he does not meet the "in custody" requirement and because the petition is untimely.¹ (Doc. 3). The

¹Because it is determined that the petition is untimely, the "in custody"
(continued...)

petitioner filed a response to the show cause order on March 19, 2018. (Doc. 4). Even considering the applicable tolling period during which the petitioner was exhausting his post-conviction remedies, Judge Arbuckle determined that the instant petition is untimely. As such, on March 15, 2019, he issued the instant report recommending that the petition be dismissed with prejudice as untimely. (Doc. 5). The petitioner has filed no objections to Judge Arbuckle's report.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The court has reviewed the record in this case and finds no clear error of record. The court agrees with the sound reasoning which led Judge

¹(...continued)
requirement was not addressed by Judge Arbuckle and need not be addressed herein.

Arbuckle to conclude that the plaintiff's petition is untimely. Therefore, the court will adopt the report of Judge Arbuckle in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report of Judge Arbuckle, (**Doc. 5**), is **ADOPTED IN ITS ENTIRETY**.
- (2) The plaintiff's habeas petition, (**Doc. 1**), is **DISMISSED WITH PREJUDICE**.
- (3) The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: April 9, 2019

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