

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

FRANK TRAINOR,

Petitioner,

v.

SUPERINTENDENT ROZUM, *et al.*,

Respondents.

Civil Action No. 09-260 Erie

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on October 15, 2009 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [18], filed on July 30, 2010, recommends that the Respondents' motion to dismiss [13] be granted, that the instant petition for writ of habeas corpus be dismissed as untimely, and that a certificate of appealability be denied. The parties were allowed ten (10) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI Somerset, where he is incarcerated. Petitioner's objections [19] were filed on August 20, 2010. After de novo review of the petition and documents in the case, together with the Report and Recommendation and Petitioner's objections thereto, the following order is entered:

AND NOW, this 25th day of August, 2010,

IT IS ORDERED that the Respondents' motion to dismiss [13] be, and hereby is, GRANTED, and the instant petition for writ of habeas corpus be, and hereby is, DISMISSED as untimely.

Inasmuch as reasonable jurists would not find it debatable whether the instant habeas corpus petition is untimely, IT IS FURTHER ORDERED that no certificate of appealability shall issue.

The Report and Recommendation of Magistrate Judge Baxter, filed on July 30, 2010 [18], is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
SEAN J. McLAUGHLIN
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge