

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

KENYA FITZGERALD,	)	2:11cv515
	)	Electronic Filing
Petitioner,	)	
	)	District Judge David S. Cercone
v.	)	Chief Magistrate Judge Lisa Pupo Lenihan
	)	
ATTORNEY GENERAL OF THE	)	
COMMONWEALTH OF	)	
PENNSYLVANIA, <i>et al.</i> ,	)	
	)	
Respondents.	)	

**MEMORANDUM ORDER**

Petitioner, Kenya Fitzgerald, initiated this action by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, (ECF Nos. 1, 6), and this case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judge’s Act, 28 U.S.C. § 636(b)(1), and Local Rules 72.C and 72.D.

Respondents filed a Motion to Dismiss (ECF No. 10) the habeas petition asserting that the petition was untimely filed, and Petitioner filed a response in opposition to the motion (ECF No. 15). On January 25, 2012, the Magistrate Judge entered a Report and Recommendation (ECF No. 16) recommending that Respondents’ motion be granted, the habeas petition be dismissed as untimely, and a certificate of appealability be denied. Petitioner was served with the Report and Recommendation at his listed address and advised that he had until February 13, 2012, to file written objections. Shortly thereafter, Petitioner moved for and was granted an extension until March 7, 2012, to file objections. As of the date of this order, no objections have been filed.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered.

AND NOW, this 21<sup>st</sup> day of March, 2012,

**IT IS HEREBY ORDERED** that Respondents' Motion to Dismiss (ECF No. 10) is **GRANTED** and Petitioner's Petition for Writ of Habeas Corpus is hereby **DISMISSED** as untimely.

**IT IS FURTHER ORDERED** that a Certificate of Appealability is **DENIED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 16) dated January 25, 2012, is **ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that the Clerk of the Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.



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David Stewart Cercione  
United States District Judge

cc: Kenya Fitzgerald  
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(Via First Class Mail)

Rusheen R. Pettit, Esquire  
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