

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Michael L. Joe, # 270002,)
a/k/a Michael Larron Joe,)
))
Petitioner,)
))
vs.)
))
A.J. Padula, Warden)
))
Respondent.)
_____)

Civil Action No.: 9:11-cv-1090-TLW-BM

ORDER

The petitioner, Michael L. Joe (“petitioner”), brought this civil action, pro se, pursuant to 28 U.S.C. § 2254 on May 6, 2011. (Doc. # 1).

This matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Bristow Marchant to whom this case had previously been assigned. (Doc. # 27). In the Report, the Magistrate Judge recommends that the District Court grant the respondent’s motion for summary judgment (Doc. # 20) and dismiss this petition for a writ of habeas corpus, with prejudice. (Doc. # 27). The petitioner filed objections to the Report. (Doc. # 29). In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court’s review of the Report thus depends on whether or not

objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. After careful review of the Report and objections thereto, the Court **ACCEPTS** the Report. (Doc. # 27). Therefore, for the reasons articulated by the Magistrate Judge, the Court finds that this petition pursuant to 28 U.S.C. § 2254 is subject to dismissal because it was not filed within the one-year limitations period set forth in 28 U.S.C. § 2244(d) and because the petitioner is not entitled to equitable tolling. Even if the petitioner were entitled to equitable tolling, this petition is subject to dismissal for the reasons set forth in Part III of the Report. Accordingly, the respondent's motion for summary judgment (Doc. # 20) is **GRANTED**, and this petition pursuant to 28 U.S.C. § 2254 is **DISMISSED** with prejudice

The Court has reviewed this petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The petitioner's motion for a certificate of appealability (Doc. # 30) is **DENIED**, as the Court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised herein. The petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/Terry L. Wooten
United States District Judge

June 18, 2012
Florence, South Carolina