

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

JAMES D. HOLTRY,
a/k/a Jim Holtry,

Petitioner,

vs.

WARDEN BOB DOOLEY,
Department of Corrections; and
THE ATTORNEY GENERAL OF THE
STATE OF SOUTH DAKOTA,

Respondents.

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CIV 18-5016

ORDER

Petitioner James D. Holtry, an inmate at the Rapid City Community Work Center in Rapid City, South Dakota, has applied for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge issued a Report and Recommendation recommending that the Respondents' Motion to Dismiss be granted and Mr. Hopkins' Petition for Habeas Corpus be dismissed with prejudice. Petitioner filed no objections to the Report and Recommendation. In reviewing the file, the Court notes that the discovery requested by Petitioner in state court was for the stated purpose of preparing a habeas corpus petition, but it did not request habeas relief and is no basis for a tolling of the time periods.

After conducting an independent review of the record, the Court agrees with the Magistrate Judge. Accordingly,

IT IS ORDERED:

1. That the Report and Recommendation, Doc. 15, is ADOPTED.
2. That Respondents' Motion to Dismiss, Doc. 12, is GRANTED.

3. That Petitioner's application for Writ of Habeas Corpus, Doc. 1, is dismissed with prejudice.
4. That Petitioner's Motion to Proceed *Informa Pauperis*, Doc. 2, is denied as moot.
5. That Petitioner's Motion for Discovery, Doc. 4, is denied as moot.
6. That Petitioner's Motion for Return of Property, Doc. 6, is denied as moot.
7. That a Certificate of Appealability shall not issue.

Dated this 21st day of May, 2018.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
MATTHEW W. THELEN, CLERK

By: Summa Wahyud
Deputy