UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FRANK HUEY,	)
	)
Petitioner,	)
	)
v.	) **No. 3:08-0824**
	) **Judge Trauger**
WARDEN JOE EASTERLING,	)
	)
Respondent.	)

O R D E R

The court has before it a *pro se* petition for a writ of *habeas corpus* filed under 28 U.S.C. §

2254. (Docket Entry No. 1) Also before the court is the respondent's motion to dismiss this action

as untimely. (Docket Entry No. 17)

As provided in the memorandum entered contemporaneously herewith, the court finds that

the petition is untimely, and that equitable tolling is not warranted. Therefore, the petitioner's

request for equitable tolling (Docket Entry No. 10) is **DENIED**, and the respondent's motion to

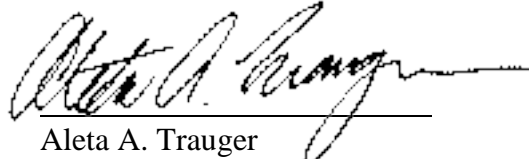dismiss this action as untimely (Docket Entry No. 17) is **GRANTED**.

The petitioner's petition for federal *habeas corpus* relief (Docket Entry No. 7) is **DENIED**,

and this action is **DISMISSED**. Rule 8(a), Rules – Section 2254 Cases. As the petitioner has paid

the filing fee, his motion to proceed *in forma pauperis* (Docket Entry No. 9) is **DENIED** as moot.

The petitioner's request for appointment of counsel, and to be provided with a copy of the record

(Docket Entry No. 1, 11), also are **DENIED** as moot.

Should the petitioner file a notice of appeal, such notice shall be docketed as both a notice

of appeal and an application for a certificate of appealability, *Slack v. McDaniel*, 529 U.S. 473, 483

(2000); Rule 22(b), Fed. R. App. P., which will **NOT** issue*, see* 28 U.S.C. § 2253(c)(2); *Castro v.*

United States of America, 310 F.3d 900, 901 (6th Cir. 2002); *Murphy v. Ohio*, 263 F.3d 466, 467 (6th

Cir. 2001); *Porterfield v. Bell*, 258 F.3d 484, 485-487 (6th Cir. 2001); *Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6th Cir. 1997)(overruled in part on other grounds by *Lindh v. Murphy*, 521 U.S. 320, 326-27 (1997)).

Entry of this order shall constitute the judgment in this action.

It is so **ORDERED**.

Aleta A. Trauger
United States District Judge