
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

CLIFFORD KENNETH PHILLIPS,

Petitioner,

versus

DIRECTOR, TDCJ-CID,

Respondent.

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CIVIL ACTION NO. 1:08-CV-673

**MEMORANDUM ORDER ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Clifford Kenneth Phillips, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court.

The respondent has filed a motion asking that the petition be dismissed as barred by the applicable statute of limitations. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion be granted and the petition dismissed.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. No objections were filed to the Report and Recommendation.

ORDER

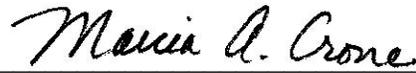
Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. The motion to dismiss is **GRANTED**. A final judgment will be entered dismissing the petition.

In addition, the court is of the opinion that the petitioner is not entitled to a certificate of appealability with respect to this matter. An appeal from a final judgment denying a petitioner federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing that he has been denied a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner is not required to establish that he would prevail on the merits. Rather, he must demonstrate that the issues raised by the petition are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether a certificate of appealability should be granted should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, the petitioner has not shown that the issue of whether his claims are barred by the applicable statute of limitations is subject to debate among jurists of reason. The factual and legal questions raised by petitioner have been consistently resolved adversely to his position and

the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED at Beaumont, Texas, this 24th day of August, 2009.

A handwritten signature in cursive script that reads "Marcia A. Crone".

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE