

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

CHARLES NICK CHIODO, JR., #01358206

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VS.

CIVIL ACTION NO. 4:10cv74

DIRECTOR, TDCJ-CID

**ORDER OF DISMISSAL**


The above-entitled and numbered civil action was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed with prejudice. Petitioner filed objections.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. An attorney's negligence, such as "miscalculation that leads a lawyer to miss a filing deadline, does not warrant equitable tolling." *Holland v. Florida*, 560 U.S. 631, 651, 130 S. Ct. 2549, 2564, 177 L. Ed.2d 130 (2010). Further, even complete "attorney abandonment . . . does not, by itself, excuse the petitioner from his duty of diligence." *Manning v. Epps*, 688 F.3d 177, 185 n. 2 (5th Cir. 2012). Petitioner fails to show that state action prevented him from filing a timely protective federal petition and seeking a stay. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. It is further

**ORDERED** that all motions not previously ruled on are hereby **DENIED**.

**SIGNED this the 17th day of August, 2016.**



RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE