

****NOT FOR PRINTED PUBLICATION****IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DWIGHT WOLF

§

VS.

§

CIVIL ACTION NO. 9:20-CV-10

DIRECTOR, TDCJ-CID

§

MEMORANDUM OPINION AND ORDER
PARTIALLY ADOPTING REPORT AND RECOMMENDATION

Petitioner, Dwight Wolf, a prisoner currently confined at the Smith Unit with 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 Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed with prejudice as bared by the statute of limitations (docket entry no. 21).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the records, and pleadings. Respondent filed objections to the Report and Recommendation of United States Magistrate Judge (docket entry no. 22). This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

While Respondent agrees with the ultimate recommendation that the petition be dismissed as time-barred, Respondent objects to the deadline calculated by the Magistrate Judge. Respondent states the deadline appears to be a typographical error. After a careful review of the relevant dates and deadlines in this case, it is clear the deadline of May 7, 2016 outlined in the Report and Recommendation is, in fact, a typographical error. The Magistrate Judge correctly noted that petitioner accrued 348 days of statutory tolling during the pendency of his first and second state

application for writ of habeas corpus. As such, petitioner's deadline to file his federal petition for writ of habeas corpus moved to April 20, 2016. Petitioner's federal habeas application filed December 15, 2019 is more than three years too late.

ORDER

Accordingly, Respondent's objections are **SUSTAINED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **PARTIALLY ACCEPTED** to the extent it recommends dismissing the habeas petition as time-barred. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

So ORDERED and SIGNED, Mar 06, 2021.



Ron Clark
Senior Judge