

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROBERTO GONZALES GARCIA,	§	
	§	
Petitioner,	§	
v.	§	
NATHANIEL QUARTERMAN, Director,	§	Civil Action No. 3:07-CV-1048-L
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

ORDER

Before the court is Garcia’s Petition for Writ of Habeas Corpus, filed April 10, 2007, in the Western District of Texas, Waco Division. On June 13, 2007, the petition was transferred to the Northern District of Texas, Dallas Division, and pursuant to Special Order 3-251, was referred to United States Magistrate Judge Paul D. Stickney. On November 25, 2008, the Findings, Conclusions, and Recommendation of the United States Magistrate Judge (“Report”) was filed. After receiving an extension of the deadline for filing objections, Petitioner filed objections to the Report on January 9, 2009.*

This is a habeas petition filed pursuant to 28 U.S.C. § 2254. The magistrate judge found that the petition was barred by the one-year statute of limitations of the Antiterrorism and Effective


*Petitioner describes his filing as an objection to Respondent’s answer. Respondent has neither appeared nor filed an answer in this case. Moreover, Petitioner’s objections are directed at findings made by the magistrate judge and were filed within the time permitted for objecting to the Report. Therefore, the court construes the filing as an objection to the Report rather than objections to Respondent’s answer.

Death Penalty Act of 1996 and that Petitioner was not entitled to equitable tolling because he failed to demonstrate rare and exceptional circumstances.

Petitioner concedes that his habeas petition was untimely, but objects to the magistrate judge's conclusion that he is not entitled to equitable tolling. Petitioner contends that he is entitled to equitable tolling because of his claim of actual innocence. Because this argument was considered by the court in its review of the petition, the court will not separately address it herein. Accordingly, the court **overrules** this objection.

Having reviewed the pleading, file, record in this case, and the Report, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court, and the court **dismisses with prejudice** the writ of habeas corpus as barred by the one-year limitations period.

It is so ordered this 26th day of January, 2009.


Sam A. Lindsay
United States District Judge