

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

DENNIS JEROME PIERCE  
(TDCJ No. 1836914),

Petitioner,

V.

LORIE DAVIS, Director  
Texas Department of Criminal Justice  
Correctional Institutions Division,

Respondent.

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No. 3:17-cv-2157-N

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE  
JUDGE AND DENYING A CERTIFICATE OF APPEALABILITY**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. An objection was filed by Petitioner. *See* Dkt. No. 16. The District Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding no error, the Court ACCEPTS the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

To the extent that, through his objection [Dkt. No. 16], Petitioner moves for abatement and declaratory and injunctive relief, that motion is DENIED for the reasons stated in the Findings, Conclusions, and Recommendation of the United States Magistrate Judge. Petitioner’s habeas application under 28 U.S.C. § 2254 is

clearly time-barred.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the Court DENIES a certificate of appealability. The Court adopts and incorporates by reference the Magistrate Judge’s Findings, Conclusions, and Recommendation filed in this case in support of its finding that Petitioner has failed to show that reasonable jurists would find “it debatable whether the petition [currently] states a valid claim of the denial of a constitutional right” and “debatable whether [this Court] was correct in its procedural ruling” – that Petitioner’s habeas application is barred by the statute of limitations. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).<sup>1</sup>

In the event that Petitioner will file a notice of appeal, the Court notes that he shall either pay the appellate filing fee of \$505.00 or move for leave to proceed *in*

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<sup>1</sup> Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

*forma pauperis* on appeal.

SO ORDERED this 16<sup>th</sup> day of January, 2018.

  
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DAVID C. GODBEY  
UNITED STATES DISTRICT JUDGE