

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION**

**KENNY EDGEMON,  
TDCJ No. 2113666,**

**Petitioner,**

**v.**

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

**Respondent.**

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**Civil Action No. 7:18-cv-134-O-BP**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND DISMISSING PETITION**

The United States Magistrate Judge has entered his Findings, Conclusions, and Recommendation. *See* ECF No. 15. Petitioner did not file objections to the Recommendation. The Magistrate Judge recommends that this habeas action be dismissed with prejudice as time-barred and for failure to exhaust state remedies. The District Court reviewed the Findings, Conclusions, and Recommendation for plain error. Finding no error, I am of the opinion that the findings of fact, conclusions of law, and reasons for denial set forth in the Magistrate Judge’s Recommendation are correct and they are hereby adopted and incorporated by reference as the Findings of the Court with the following modifications:

The Magistrate Judge recommends dismissal, in part, because Petitioner has failed to exhaust state remedies. Petitioner did not file a petition for discretionary review and he has not filed a state application for habeas relief under Texas Code of Criminal Procedure art. 11.07. Therefore, he has failed to exhaust state remedies.

Although his federal petition is barred by the one-year statute of limitations, Petitioner may still be permitted to pursue relief in state court under art. 11.07. For that reason, this action will be dismissed without prejudice to Petitioner's right to pursue state habeas relief. *See Diaz v. Dretke*, No. 5:03-cv-236-C, 2004 WL 691213 at \*6 (N.D. Tex. Mar. 31, 2004) (dismissing time-barred petition with prejudice to refiling in federal court, but without prejudice to Petitioner's right to pursue state habeas relief where he had never filed an art. 11.07 petition). Also, having failed to file objections to the Magistrate Judge's recommendation, Petitioner's only arguments for statutory or equitable tolling of the statute of limitations, which are set forth in his Amended Petition (ECF No. 5 at 9), are unavailing.

For the foregoing reasons, this action is **DISMISSED** with prejudice as time-barred, but without prejudice to Petitioner's right to pursue state habeas relief.

**SO ORDERED** this **21st day of February, 2019**.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE