

United States District Court
Southern District of Texas

ENTERED

March 23, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ANDRES ENRIQUE CANTU
Petitioner

§
§
§
§
§
§
§
§

VS.

CIVIL ACTION NO. 7:15-CV-555

LORIE DAVIS, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE, C.I.D.
Respondents.

**ORDER ADOPTING IN PART MAGISTRATE COURT'S
REPORT AND RECOMMENDATION**

Pending before the Court is Petitioner's application to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2254, which motion had been referred to the Magistrate Court for a report and recommendation. On February 15, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Respondent's motion for Summary Judgment (Dkt. Entry No. 10) be granted and that Petitioner's section 2254 motion be dismissed with prejudice as time-barred. Also pending before the Court are Petitioner's and Respondents objections to the Report and Recommendations.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has conducted a de novo review of the Report and Recommendation. Finding no clear erroneous error, the Court adopts the Report and Recommendation in its entirety on the issue of the time barred claims. Accordingly, Petitioner's section 2254 claims are **DISMISSED** with prejudice as time-barred. However, this Court concludes that jurists of reason would not find the denial of equitable tolling debatable and therefore **DENIES** a Certificate of Appealability.

SO ORDERED this 21st day of March, 2017, at McAllen, Texas.

A handwritten signature in black ink that reads "Randy Crane". The signature is written in a cursive style with a horizontal line underneath it.

Randy Crane
United States District Judge