

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JAMES MICHAEL DOWNEY,

Petitioner,

v.

CIVIL ACTION NO. 2:20-cv-00153

RUSSELL MASTON,

Respondent.

MEMORANDUM OPINION AND ORDER

On February 27, 2020, the Petitioner, proceeding *pro se*, filed his *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1). The Respondent's *Motion to Dismiss Petition as Untimely* (Document 8) was filed on April 3, 2020.

By *Standing Order* (Document 2) entered on February 28, 2020, this action was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On December 18, 2020, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 11) wherein it is recommended that this Court grant the Respondent's *Motion to Dismiss Petition as Untimely* (Document 8), dismiss the Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1), and remove this matter from the Court's docket unless the Petitioner can demonstrate within the period of time allotted for objecting

to the *Proposed Findings and Recommendation* that his petition was filed within the proper time period or that circumstances exist which would permit equitable tolling of the limitation period.


Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by January 4, 2021, and none were filed by either party. Additionally, within the objection period, the Petitioner failed to demonstrate that his petition was filed within the proper time period or that circumstances exist which would permit equitable tolling of the limitation period.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *Respondent's Motion to Dismiss Petition as Untimely* (Document 8) be **GRANTED**, the *Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1) be **DISMISSED**, and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: January 8, 2021


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA