

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

SEP 13 2011

PETER GENE GLORIA,)
)
Petitioner,)
)
vs.)
)
JUSTIN JONES, Director,)
)
Respondent.)

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY *tdh* DEPUTY

No. CIV-11-597-W

ORDER

On August 8, 2011, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation in this matter and recommended that the Court grant the Motion to Dismiss Petition for Habeas Corpus filed by respondent Justin Jones, Director, and dismiss as untimely filed the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Peter Gene Gloria. Gloria was advised of his right to object, but no objections to the Report and Recommendation have been filed within the allotted time.

Upon review of the record, the Court concurs with Magistrate Judge Couch's suggested disposition of Jones' Motion to Dismiss Petition for Habeas Corpus. Gloria's Petition and the grounds raised therein are subject to the one-year statute of limitations established by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244(d)(1). For purposes of the AEDPA, Gloria's conviction for murder in the first degree became final on May 14, 2000; Gloria therefore had until May 14, 2001, to seek relief under 28 U.S.C. § 2254. The instant Petition is file-stamped May 28, 2011. Accordingly, this matter is time-barred unless Gloria has established that the one-year limitations period has been tolled.

The records reveals that Gloria not entitled to either statutory tolling, e.g., 28 U.S.C. § 2244(d)(2)(time during which properly filed application for post-conviction or other collateral review pending not counted), or equitable tolling. E.g., Lopez v. Trani, 628 F.3d 1228 (10th Cir. 2010)("actual innocence" exception to procedural barrier posed by AEDPA's limitations period applied only in extraordinary cases).

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation [Doc. 11] issued on August 8, 2011;
- (2) GRANTS Jones' Motion to Dismiss Petition for Habeas Corpus as Time Barred by the Statute of Limitations [Doc. 8] filed on June 21, 2011; and
- (3) DISMISSES Gloria's Petition with prejudice.

ENTERED this 15th day of September, 2011.


LEE R. WEST
UNITED STATES DISTRICT JUDGE