

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MICHAEL CHARLES SAMUEL,	§	
<i>Petitioner,</i>	§	
	§	
vs.	§	CIVIL ACTION H-06-2668
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
<i>Respondent.</i>	§	

MEMORANDUM AND RECOMMENDATION

Petitioner Michael Charles Samuel, an inmate of the Texas Department of Criminal Justice, has filed a federal petition for a writ of habeas corpus under 28 U.S.C. § 2254, which has been referred to this magistrate judge for report and recommendation. (Dkt. 1). Respondent has filed a motion for summary judgment. (Dkt. 10). The court recommends that Samuel’s application be dismissed as time barred pursuant to 28 U.S.C. § 2244(d)(1)(A).

Samuel was charged with sexual assault with two prior felony convictions alleged for enhancement of punishment in the 178th District Court of Harris County, Texas. On January 22, 1996, Samuel entered a guilty plea pursuant to a plea bargain agreement, and was sentenced to 25 years in prison. Samuel did not appeal his conviction, but filed three applications for writ of habeas corpus. The first was a federal habeas petition which was dismissed on September 30, 1998 for failure to exhaust state court remedies. His other petitions were state habeas petitions which were denied by the Texas Court of Criminal Appeals on November 14, 2001 and July 26, 2006. Samuel filed this federal application for

writ of habeas corpus on August 15, 2006.

Samuel's federal application is governed by the amendments to the federal habeas corpus statutes contained in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2224. The AEDPA provides a one year limitation period for habeas petitions, running from the latest of several start dates, including "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). Because Samuel did not file an appeal, his conviction became final on February 21, 1996, 1983, thirty days after his sentencing. Prisoners whose convictions became final prior to April 24, 1996, the effective date of the AEDPA, had one year after that date, or until April 24, 1997, in which to file for § 2254 relief. *Grooms v. Johnson*, 208 F.3d 488, 489 (5th Cir. 1999).

Even allowing for tolling by his state habeas petitions, Samuel's limitation period has expired. The petition does not present any grounds for equitable relief or statutory tolling of his limitations period. Samuel's claims do not present a constitutional right recognized by the Supreme Court within the last year, which could be retroactive on collateral review. Furthermore, the record does not reflect that Samuel was unable to have exercised reasonable diligence or that any unconstitutional "state action" impeded Samuel from filing for federal habeas relief prior to the end of the limitations period. Therefore, the court recommends that this application be denied as time barred under 28 U.S.C. § 2244(d).

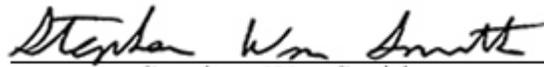
For the reasons discussed above, the court recommends that petitioner's application

for writ of habeas corpus be denied with prejudice.

The court further finds that Samuel has not made a substantial showing that he was denied a constitutional right or that it is debatable whether this court is correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, the court recommends that a certificate of appealability not issue.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on December 4, 2006.



Stephen Wm Smith
United States Magistrate Judge