

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

FREDERICK L. PUGH,	§	
<i>Petitioner,</i>	§	
	§	
vs.	§	CIVIL ACTION H-06-2710
	§	
NATHANIEL QUATERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
<i>Respondent.</i>	§	

MEMORANDUM AND RECOMMENDATION

Petitioner Frederick L. Pugh, 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). The court recommends that Pugh’s application be dismissed as time barred pursuant to 28 U.S.C. § 2244(d)(1)(A).¹

Pugh alleges in his petition that he was convicted of aggravated robbery in the 179th District Court of Harris County, Texas on December 30, 1982. He was sentenced to 50 years in prison. Pugh did not appeal his conviction, but filed four applications for writ of habeas corpus in the Texas Court of Criminal Appeals, which were denied on August 30, 1995, January 10, 1996, January 22, 1997, and April 24, 2002. Pugh filed his federal application for writ of habeas corpus on August 21, 2006.

¹ The court denies Pugh’s motion to object (Dkt. 3) and motion to set hearing (Dkt. 4). The court grants Pugh’s application to proceed as a pauper. (Dkt. 5).

Pugh'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 Pugh did not file an appeal, his conviction became final on January 29, 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, Pugh's limitation period has expired. Pugh's last habeas petition was denied in 2002, four years prior to the filing of his present petition. The petition does not present any grounds for equitable relief or statutory tolling of his 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 Pugh 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 October 18, 2006.



Stephen Wm Smith
United States Magistrate Judge