

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

TAWAN RESHEED HILL,	§	
<i>Petitioner,</i>	§	
	§	
vs.	§	CIVIL ACTION H-07-58
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
<i>Respondent.</i>	§	

MEMORANDUM AND RECOMMENDATION

Petitioner Tawan Resheed Hill, 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 Hill's application be dismissed as time barred pursuant to 28 U.S.C. § 2244(d)(1)(A).

Hill was convicted of aggravated robbery in the 230th District Court of Harris County, Texas and sentenced to twenty-five years imprisonment and a \$2500.00 fine. On May 26, 2005, the Court of Appeals, Thirteenth District of Texas affirmed Hill's conviction. *Hill v. State*, No. 13-03-CR, 2005 WL 1301401 (Tex. App. - Corpus Christi, May 26, 2005, no pet.) Hill did not file a petition for discretionary review, but filed this federal application for writ of habeas corpus on January 5, 2007.

Hill'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 Hill did not file a petition for discretionary review, his conviction became final on June 26, 2005, thirty days after his direct appeal was affirmed by the court of appeals. Tex. R. App. P. 68.2(a); *Roberts v. Cockrell*, 319 F.3d 690, 694-95 (5th Cir. 2003).¹ Under § 2244(d)(1)(A), Hill’s limitation period expired one year later on June 25, 2006. However, this federal petition was filed on January 5, 2007, almost six months after the one-year limitations period.

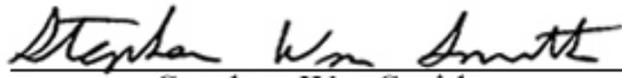
Hill’s state habeas petition did not toll the limitations period because it was filed on August 4, 2006 after the limitations period had run. The petition does not present any grounds for equitable relief or statutory tolling of his limitations period. Hill’s claims do not present a constitutional right recognized by the Supreme Court within the last year, which could be retroactive on collateral review. Furthermore, the record does not reflect that Hill was unable to have exercised reasonable diligence or that any unconstitutional “state action” impeded Hill 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).

¹ Hill mistakenly cites *Roberts* for the proposition that for purposes of § 2244(d) the conviction was not final until the Texas court of appeals issued its mandate, well after the 30 day review period. The holding in *Roberts* was just the opposite: “Because the decision became final when the time for seeking further direct review expired, the issuance of the mandate by the state court of appeals is of no consequence for the purposes of § 2244(d)(1)(A).” 319 F.3d at 694-95.

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 Hill 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 June 26, 2007.



Stephen Wm Smith
United States Magistrate Judge