

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

RICKY CREEL
VERSUS
STATE OF LOUISIANA,
WARDEN DARRELL VANNOY

CIVIL ACTION
NO. 19-12381
SECTION "J"(4)

O R D E R

Before the Court is Petitioner Ricky Creel's *Objection to Magistrate Judge's Report and Recommendation (Rec. Doc. 17)*. The Magistrate Judge recommended that Creel's petition for writ of habeas corpus be dismissed as time barred. Creel contends that he is entitled to equitable tolling because the state court denied his second application for postconviction relief as untimely without giving him a chance to show cause for his default. His argues that his appeal from the denial of his second application was untimely due to the delay in his receipt of the trial court's ruling, which entitles him to equitable tolling.

However, the record reflects that Creel's second state application for postconviction release was filed approximately fourteen months after the statute of limitations for his federal habeas petition began to run. Thus, Creel's federal petition was untimely even before he filed his second state application, and any delays in the appeal of that application can have no bearing on the timeliness of his federal petition. The Court finds that Creel's objection lacks merit and therefore approves the Magistrate Judge's Report and Recommendation and adopts it as its opinion in this matter.

Accordingly,

IT IS HEREBY ORDERED that Ricky Creel's petition for issuance of a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 be **DISMISSED WITH PREJUDICE** as time-barred.

New Orleans, Louisiana, this 2nd day of June, 2020.



CARL J. BARBIER
UNITED STATES DISTRICT JUDGE