

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARK ALLEN KUTNYAK,	:	
	:	CIVIL ACTION
Petitioner,	:	
	:	NO. 05-350
v.	:	
	:	
JAMES T. WYNDER, et al.,	:	
	:	
Respondents.	:	

**MEMORANDUM**

BUCKWALTER, S.J.

June 2, 2005

Petitioner has filed objections to Magistrate Judge Thomas J. Rueter’s Report and Recommendation. Essentially, the objections are that the statute of limitations should be equitably tolled and the Magistrate Judge was wrong in concluding otherwise.

But, there is no evidence produced by the Petitioner that:

- (1) the state actively mislead him; or
- (2) he has in some extraordinary way been prevented from asserting his rights;  
or
- (3) he has timely asserted his rights but in the wrong forum.

As pointed out in the Magistrate Judge’s Report and Recommendation, Petitioner has the burden of establishing that he pursued his rights diligently and some extraordinary circumstances stood in his way. (He offers no credible explanation for not filing a PCRA

petition until September 8, 2000, after his first federal petition was dismissed for non-exhaustion on September 10, 1996).

Petitioner cannot meet this burden. The record does not support any of the three prongs listed above. (For example, *see* Volume I, Exhibit A, docket entries and Exhibit V, entire opinion of Judge S. Gerald Corso, and specifically pages 26 and 27).

An order follows.

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**ORDER**

AND NOW, this 2<sup>nd</sup> day of June, 2005, upon careful and independent consideration of the pleadings and record herein, and after review of the Report and Recommendation of Thomas J. Rueter, United States Magistrate Judge, and Petitioner's objections thereto, it is hereby ORDERED:

1. The Report and Recommendation is APPROVED and ADOPTED;
2. The petition for a writ of habeas corpus is DISMISSED; and
3. A certificate of appealability is not granted, since Petitioner has failed to make a substantial showing of the denial of any constitutional right.

BY THE COURT:

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RONALD L. BUCKWALTER, S.J.