

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ASHANTI RHAN HENRY,

Petitioner,

v.

No.: 3:12-cv-439
(VARLAN/GUYTON)

FRED NEWMAN,

Respondent.

MEMORANDUM

This is a petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2241, in which petitioner challenges his 2005 Knox County convictions for robbery and possession of crack cocaine. According to petitioner, he pleaded guilty and did not appeal his conviction or sentence nor did he file a petition for post-conviction relief. Pursuant to 28 U.S.C. § 2244(d), there is a one-year statute of limitation for state prisoners to file a habeas corpus petition in federal court; the limitation period generally runs from the date on which the judgment of conviction became final, with the provision that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." *Id.* § 2244(d)(2).

Because petitioner did not appeal or file for post-conviction relief, his conviction became final in 2005. For that reason, petitioner was ordered to show cause why his petition should not be dismissed as untimely. *See Day v. McDonough*, 547 U.S. 198, 209-10 (2006)

(district court may *sua sponte* dismiss habeas petition as time-barred, after giving petitioner fair notice and an opportunity to be heard). Petitioner has failed to respond to the Court's order within the time required. Accordingly, this action will be **DISMISSED WITH PREJUDICE** as time-barred and for failure to prosecute and to comply with the orders of the Court. Rule 41(b) of the Federal Rules of Civil Procedure; Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts. The Clerk is **DIRECTED** to notify the petitioner of this Order and to close this file. A certificate of appealability **SHALL NOT ISSUE** in this action. 28 U.S.C. § 2253(c).

In addition to the above, this Court has carefully reviewed this case pursuant to 28 U.S.C. § 1915(a) and will **CERTIFY** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court will **DENY** the petitioner leave to proceed *in forma pauperis* on appeal. See Rule 24 of the Federal Rules of Appellate Procedure.

AN APPROPRIATE ORDER WILL ENTER.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE