

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AHKEEM WIGGINS

PETITIONER

VS.

ROBERT TANNER, WARDEN

RESPONDENT(S)

APPENDIX

For convenience of the Court, please find the following documents enclosed:

APPENDIX "A" United States Court of Appeal, Fifth Circuit decision

APPENDIX "B" United States District Court decision

APPENDIX "C" Louisiana Supreme Court decision

APPENDIX "D" Report and Recommendation filed by Magistrate Karen L. Hayes

APPENDIX "E" Objection to report and Recommendation

APPENDIX "F" Judgment of the Louisiana Court of Appeal, Second Circuit

APPENDIX "G" Judgment and Procedural Objection filed by the 1st Judicial District Court

APPENDIX "H" Bill of Information filed by the 1st Judicial District Court

APPENDIX A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

June 20, 2018

Mr. Tony R. Moore
Western District of Louisiana, Shreveport
United States District Court
300 Fannin Street
Suite 1167
Shreveport, LA 71101-0000

No. 17-30905 Ahkeem Wiggins v. Robert Tanner, Warden
USDC No. 5:16-CV-1088

Dear Mr. Moore,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By:

Lisa E. Ferrara, Deputy Clerk
504-310-7675

cc w/encl:
Mr. Ahkeem Wiggins

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-30905



AHKEEM WIGGINS,

Petitioner-Appellant,

v.

ROBERT C. TANNER, WARDEN, B. B. RAYBURN CORRECTIONAL
CENTER,

Respondent-Appellee.

A True Copy
Certified order issued Jun 20, 2018

Tyke W. Cuyce
Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from the United States District Court
for the Western District of Louisiana

O R D E R:

Ahkeem Wiggins, Louisiana prisoner # 586480, moves for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 application challenging his conviction and sentence for armed robbery. The district court dismissed the § 2254 application as time barred. Wiggins argues that the trial court lacked jurisdiction to accept a guilty plea to a sentencing enhancement and that trial counsel was ineffective in allowing him to plead to the enhancement.

In order to obtain a COA, Wiggins must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court denies federal habeas relief on procedural grounds, the applicant must demonstrate that reasonable jurists

would find it debatable whether the § 2254 application states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484. Wiggins has not met this standard. *See id.*

Accordingly, Wiggins's motion for a COA is DENIED.

Don R. Willett

DON R. WILLETT
UNITED STATES CIRCUIT JUDGE

U.S. District Court
Western District of Louisiana

Notice of Electronic Filing

The following transaction was entered on 5/25/2017 at 11:35 AM CDT and filed on 5/25/2017

Case Name: Wiggins v. McCain et al

Case Number: 5:16-cv-01088-EEF-KLH

Filer:

WARNING: CASE CLOSED on 05/25/2017

Document Number: 10

Docket Text:

JUDGMENT ADOPTING [8] Report and Recommendations re [4] Petition for Writ of Habeas Corpus filed by Ahkeem Wiggins. IT IS ORDERED that the petition for habeas corpus be DISMISSED WITH PREJUDICE as time-barred by the provisions of 28 U.S.C. § 2244(d). Signed by Judge Elizabeth E Foote on 5/25/2017. (crt,Keifer, K)

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

AHKEEM WIGGINS
LA. DOC #586480
VS.

CIVIL ACTION NO. 5:16-CV-01088

SECTION P

JUDGE ELIZABETH E. FOOTE

W.S. MCCAIN, ET AL

MAGISTRATE JUDGE KAREN L. HAYES

JUDGMENT

For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, and after an independent review of the record including the objections filed by petitioner, and having determined that the findings¹ and recommendation are correct under the applicable law;

IT IS ORDERED that the petition for habeas corpus be **DISMISSED WITH PREJUDICE** as time-barred by the provisions of 28 U.S.C. §2244(d).

May 25, 2017.

ELIZABETH E. FOOTE
UNITED STATES DISTRICT JUDGE

¹The Report and Recommendation of the Magistrate Judge states, "On July 26, 2011, Petitioner pled guilty to armed robbery with a firearm enhancement." Record Document 8, p. 1. However, the transcript of Petitioner's guilty plea and sentencing, dated July 25, 2011, reflects that he pled guilty to armed robbery and received a fifteen-year sentence, without any "firearm enhancement bill." See Record Document 4-1, p. 6. The Court makes this notation only for clarification of the findings; it does not affect the reasoning for the ultimate conclusion that Petitioner's petition is untimely.

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

AHKEEM WIGGINS
LA. DOC #586480
VS.

CIVIL ACTION NO. 5:16-CV-01088
SECTION P

W.S. MCCAIN, ET AL

JUDGE ELIZABETH E. FOOTE

MAGISTRATE JUDGE KAREN L. HAYES

REPORT AND RECOMMENDATION

Pro se petitioner Ahkeem Wiggins filed the instant petition for writ of *habeas corpus* pursuant to 28 U.S.C. §2254 on July 22, 2016. Petitioner is an inmate in the custody of Louisiana's Department of Public Safety and Corrections. He attacks his July 26, 2011, conviction for armed robbery and the fifteen year sentence imposed by the First Judicial District Court, Caddo Parish. This matter was referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court. For the following reasons it is recommended that the petition be **DISMISSED WITH PREJUDICE** as time-barred by the provisions of 28 U.S.C. §2244(d).

Background

On July 26, 2011, Petitioner pled guilty to armed robbery with a firearm enhancement [Rec. Doc. 4, p. 1] He was sentenced on that same day to fifteen years hard labor without the benefit of parole, probation or suspension of sentence. *Id.* He did not appeal his conviction or sentence. *Id.* at p. 2

On July 20, 2013, petitioner filed an Application for Post Conviction Relief in the First Judicial District Court. [Rec. Doc. 4, p. 13]

He filed the instant petition on July 22, 2016, arguing that his conviction was obtained in

violation of the Constitution of the United States, specifically that the trial court was without jurisdiction to accept a guilty plea to enhancement penalty under La. R.S. 14:64.3, as the prosecutor never filed a bill of indictment charging petitioner with the enhancement penalty and that he was denied effective assistance of trial counsel. [Doc. 4]

Law and Analysis

1. Limitations

This petition was filed after the effective date of the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). Therefore, the court must apply the provisions of AEDPA, including the timeliness provisions. *Villegas v. Johnson*, 184 F.3d 467, 468 (5th Cir. 8/9/1999); *In Re Smith*, 142 F.3d 832, 834, citing *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S.Ct. 2059, 138 L.Ed.2d 481 (1997). Title 28 U.S.C. §2244(d)(1)(A) was amended by AEDPA to provide a one-year statute of limitations for the filing of applications for writ of *habeas corpus* by persons such as petitioner, who are in custody pursuant to the judgment of a State court. This limitation period generally runs from “...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).¹

However, the statutory tolling provision of 28 U.S.C. §2244(d)(2) provides that the time during which a properly filed application for post-conviction relief was pending in state court is not counted toward the limitation period. *Ott v. Johnson*, 192 F.3d 510, 512 (5th Cir. 1999); *Fields v. Johnson*, 159 F.3d 914, 916 (5th Cir. 1998); 28 U.S.C. §2244(d)(2). Any lapse of time before the

¹ Nothing in the record before the court suggests that any State created impediments prevented the filing of the petition. Further, nothing in the record suggests that petitioner is relying on a constitutional right newly recognized by the United States Supreme Court and made retroactively applicable to cases on collateral review. Therefore, the limitations period should not be reckoned as provided in 28 U.S.C. § 2244(d)(1)(B) or (C).

proper filing of an application for post-conviction relief in state court is counted against the one-year limitation period. *Villegas*, 184 F.3d 467, citing *Flanagan v. Johnson*, 154 F.3d 196, 197 (5th Cir.1998). Federal courts may raise the one-year time limitation *sua sponte*. *Kiser v. Johnson*, 163 F.3d 326 (5th Cir. 1999).

Petitioner did not file a direct appeal of his conviction and sentence. For AEDPA purposes, petitioner's judgment of conviction and sentence "became final by ... the expiration of the time for seeking [direct] review" [28 U.S.C. §2244(d)(1)(A)], thirty days following July 26, 2011 (the date that petitioner pled guilty and was sentenced)² or, on or about August 25, 2011. Under §2244(d)(1) petitioner had one year from that date, or until August 25, 2012, to file his federal *habeas* petition.

Petitioner was unable to toll the AEDPA's limitations period because by the time he launched his first collateral attack on his conviction in July 2013, the limitations period had already expired and could not thereafter be revived. *See Villegas*, 184 F.3d 467. Thus, none of petitioner's post-conviction pleadings could serve to toll the running of the limitations period. This petition is clearly time-barred by the provisions of the AEDPA.

2. Equitable Tolling

The AEDPA's one-year limitation period is subject to equitable tolling but, only in "rare and exceptional cases." *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir.1998), *cert. denied*, 526 U.S. 1074, 119 S.Ct. 1474, 143 L.Ed.2d 558 (1999); see also *Fisher v. Johnson*, 174 F.3d 710, 713 (5th Cir.1999) (asserting that courts must "examine each case on its facts to determine whether it presents

² See La. C.Cr.P. art. 914(b)(1) which provides, "The motion for an appeal must be made no later than [t]hirty days after the rendition of the judgment or ruling from which the appeal is taken."

sufficiently rare and exceptional circumstances' to justify equitable tolling" (quoting *Davis*, 158 F.3d at 811)). As recently noted by the Supreme Court, "To be entitled to equitable tolling, [the petitioner] must show '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Lawrence v. Florida*, 549 U.S. 327, 336, 127 S.Ct. 1079, 1085, 166 L.Ed.2d 924 (2007) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S.Ct. 1807, 161 L.Ed.2d 669 (2005)).

Neither unfamiliarity with the legal process (whether the unfamiliarity is due to illiteracy or any other reason), ignorance of the law, nor even lack of representation during the applicable filing period merits equitable tolling. See *Turner v. Johnson*, 177 F.3d 390, 291 (5th Cir.1999); see also *Barrow v. New Orleans S.S. Ass'n*, 932 F.2d 473, 478 (5th Cir.1991) (age discrimination case). Here, petitioner has alleged no circumstances to qualify for equitable tolling under § 2244(d)(1). "Equitable tolling applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights." *Coleman v. Johnson*, 184 F.3d 398, 402 (1999), *cert. denied*, 529 U.S. 1057, 120 S.Ct. 1564, 146 L.Ed.2d 467 (2000), (quoting *Rashidi v. American President Lines*, 96 F.3d 124, 128 (5th Cir.1996) (emphasis supplied)). The pleadings do not suggest that petitioner was "actively misled" nor do they suggest that he was prevented in any way from asserting his rights.

Conclusion and Recommendation

Therefore,

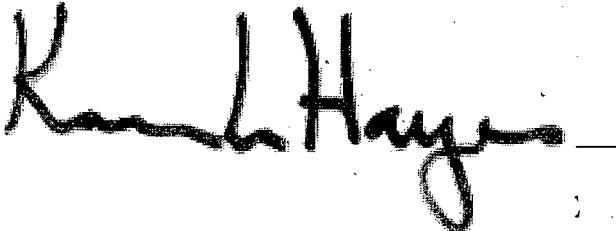
IT IS RECOMMENDED that this petition for *habeas corpus* be **DISMISSED WITH PREJUDICE** because petitioner's claims are barred by the one-year limitation period codified at 28 U.S.C. §2244(d).

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the District Judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. See, Douglass v. United Services Automobile Association, 79 F.3d 1415 (5th Cir. 1996).

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, this court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Unless a Circuit Justice or District Judge issues a certificate of appealability, an appeal may not be taken to the court of appeals. **Within fourteen (14) days from service of this Report and Recommendation, the parties may file a memorandum setting forth arguments on whether a certificate of appealability should issue.** See 28 U.S.C. §2253(c)(2). **A courtesy copy of the memorandum shall be provided to the District Judge at the time of filing.**

In Chambers, Monroe, Louisiana, Sep



U.S. District Court
Western District of Louisiana

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Case Name: Wiggins v. McCain et al

Case Number: 5:16-cv-01088-EEF-KLH

Filer: Ahkeem Wiggins

WARNING: CASE CLOSED on 05/25/2017

Document Number: 11

Docket Text:

NOTICE OF APPEAL as to [10] Judgment Adopting Report and Recommendations, by Ahkeem Wiggins. FEE STATUS: IFP GRANTED (Attachments: # (1) Envelope)(crt,WalkerStd, B)

**Additional material
from this filing is
available in the
Clerk's Office.**