

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT SMITH,

Petitioner, Case No. 1:18-cv-497

v.

Honorable Gordon J. Quist

SHANE JACKSON,

Respondent.

OPINION

This is a habeas corpus action brought by a state prisoner under 28 U.S.C. § 2254.

Promptly after the filing of a petition for habeas corpus, the Court must undertake a preliminary review of the petition to determine whether “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4, RULES GOVERNING § 2254 CASES; *see* 28 U.S.C. § 2243. If so, the petition must be summarily dismissed. Rule 4; *see Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970) (district court has the duty to “screen out” petitions that lack merit on their face). A dismissal under Rule 4 includes those petitions which raise legally frivolous claims, as well as those containing factual allegations that are palpably incredible or false. *Carson v. Burke*, 178 F.3d 434, 436-37 (6th Cir. 1999). After undertaking the review required by Rule 4, the Court concludes that the petition must be dismissed because it fails to raise a meritorious federal claim.

Discussion

I. Factual allegations

Petitioner, Scott Smith, is incarcerated with the Michigan Department of Corrections (MDOC) at the Earnest C. Brooks Correctional Facility (LRF) in Muskegon County, Michigan. In 2016, he pled *nolo contendere* in Allegan County Circuit Court to one count of second-degree criminal sexual conduct, Mich. Comp. Laws § 750.520c(1)(a). The court subsequently sentenced him to 5 years and 11 months to 15 years in prison.

Petitioner applied for leave to appeal his decision to the Michigan Court of Appeals and the Michigan Supreme Court. Those courts denied leave to appeal on June 7, 2016, and March 7, 2018, respectively.

The petition raises one ground for relief, as follows:

PETITIONER WAS DENIED A FAIR TRIAL AS GUARANTEED BY BOTH STATE AND FEDERAL CONSTITUTIONS, WHEN THE TRIAL COURT REFUSED TO ENTERTAIN THE 180-DAY RULE PRESENTED AT AN EVIDENTIARY HEARING, THE RESULT BEING A VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS AND PROTECTIONS[.]

(Pet., ECF No. 1, PageID.8.) Petitioner raised this same ground on appeal. The appellate courts summarily rejected his claim.

II. AEDPA standard

This action is governed by the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. 104-132, 110 Stat. 1214 (AEDPA). The AEDPA “prevents federal habeas ‘retrials’” and ensures that state court convictions are given effect to the extent possible under the law. *Bell v. Cone*, 535 U.S. 685, 693-94 (2002). An application for writ of habeas corpus on behalf of a person who is incarcerated pursuant to a state conviction cannot be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication: “(1) resulted in a

decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based upon an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.” 28 U.S.C. § 2254(d). This standard is “intentionally difficult to meet.” *Woods v. Donald*, 575 U.S. ___, 135 S. Ct. 1372, 1376 (2015) (internal quotation omitted).

The AEDPA limits the source of law to cases decided by the United States Supreme Court. 28 U.S.C. § 2254(d). This Court may consider only the “clearly established” holdings, and not the dicta, of the Supreme Court. *Williams v. Taylor*, 529 U.S. 362, 412 (2000); *Bailey v. Mitchell*, 271 F.3d 652, 655 (6th Cir. 2001). In determining whether federal law is clearly established, the Court may not consider the decisions of lower federal courts. *Lopez v. Smith*, 135 S. Ct. 1, 3 (2014); *Bailey*, 271 F.3d at 655. Moreover, “clearly established Federal law” does not include decisions of the Supreme Court announced after the last adjudication of the merits in state court. *Greene v. Fisher*, 565 U.S. 34 (2011). Thus, the inquiry is limited to an examination of the legal landscape as it would have appeared to the Michigan state courts in light of Supreme Court precedent at the time of the state-court adjudication on the merits. *Miller v. Stovall*, 742 F.3d 642, 644 (6th Cir. 2014) (citing *Greene*, 565 U.S. at 38).

A federal habeas court may issue the writ under the “contrary to” clause if the state court applies a rule different from the governing law set forth in the Supreme Court’s cases, or if it decides a case differently than the Supreme Court has done on a set of materially indistinguishable facts. *Bell*, 535 U.S. at 694 (citing *Williams*, 529 U.S. at 405-06). “To satisfy this high bar, a habeas petitioner is required to ‘show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.’” *Woods*,

135 S. Ct at 1376 (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)). In other words, “[w]here the precise contours of the right remain unclear, state courts enjoy broad discretion in their adjudication of a prisoner’s claims.” *White v. Woodall*, 572 U.S. ___, 134 S. Ct. 1697, 1705 (2014) (internal quotations omitted).

The AEDPA requires heightened respect for state factual findings. *Herbert v. Billy*, 160 F.3d 1131, 1134 (6th Cir. 1998). A determination of a factual issue made by a state court is presumed to be correct, and the petitioner has the burden of rebutting the presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); *Lancaster v. Adams*, 324 F.3d 423, 429 (6th Cir. 2003); *Bailey*, 271 F.3d at 656. This presumption of correctness is accorded to findings of state appellate courts, as well as the trial court. See *Sumner v. Mata*, 449 U.S. 539, 546 (1981); *Smith v. Jago*, 888 F.2d 399, 407 n.4 (6th Cir. 1989).

III. Analysis

Petitioner argues that the MDOC failed to comply with Mich. Comp. Laws § 780.131(1), which provides:

Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.

Mich. Comp. Laws § 780.131(1). Specifically, Petitioner contends that the MDOC did not send written notice by certified mail to the prosecutor as required by the foregoing statute. In addition,

it did not respond to his requests for disposition of the charge against him. Consequently, he was not prosecuted “within the time allotted by law[.]” (Br. in Supp. of Pet., ECF No. 2, PageID.26.)

Petitioner’s claim is based on a violation of state law. Petitioner apparently argues that, because the MDOC did not provide the notice required by statute, it did not start the clock for the 180-day rule under Mich. Comp. Laws § 780.131. This sort of claim is not cognizable in this action.

“[A] federal court may issue the writ to a state prisoner ‘only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.’” *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010) (quoting 28 U.S.C. § 2254(a)). A habeas petition must “state facts that point to a ‘real possibility of constitutional error.’” *Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977) (quoting Advisory Committee Notes on Rule 4, Rules Governing Habeas Corpus Cases). The federal courts have no power to intervene on the basis of a perceived error of state law. *Wilson*, 562 U.S. at 5; *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005); *Estelle v. McGuire*, 502 U.S. 67-68 (1991); *Pulley v. Harris*, 465 U.S. 37, 41 (1984). Petitioner’s claim that the MDOC did not comply with Mich. Comp. Laws § 780.131 raises only a claim concerning state law. Therefore, this claim is not cognizable on federal habeas review.

Even if Petitioner had articulated a violation of his federal constitutional rights, which he does not, he still would not be entitled to relief. A criminal defendant has a fundamental right to a speedy trial under the Sixth Amendment to the Constitution and the Due Process Clause of the Fourteenth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967). Petitioner waived his right to a speedy trial when he pled *nolo contendere*. An unconditional guilty plea constitutes a waiver of all pre-plea, non-jurisdictional constitutional deprivations. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). This waiver includes alleged speedy trial violations. *See*

Howard v. White, 76 F. App’x 52, 53 (6th Cir. 2003) (speedy trial claim was waived when petitioner entered an unconditional *nolo contendere* plea because the right to a speedy trial is not a jurisdictional issue). A *nolo contendere* plea stands on equal footing with a guilty plea. *North Carolina v. Alford*, 400 U.S. 25, 35-36 (1970); *see also Howard*, 76 F. App’x at 53. Consequently, Petitioner’s *nolo contendere* plea to second-degree criminal sexual conduct waived any claim that he was denied his right to a speedy trial. Similarly, Petitioner cannot claim, as he does in his petition, that he was denied a “fair trial” when he expressly waived his right to any trial at all.

Conclusion

In light of the foregoing, the Court will summarily dismiss Petitioner’s application pursuant to Rule 4 because it fails to raise a meritorious federal claim.

Certificate of Appealability

Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a “substantial showing of a denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This Court’s dismissal of Petitioner’s action under Rule 4 of the Rules Governing § 2254 Cases is a determination that the habeas action, on its face, lacks sufficient merit to warrant service. It would be highly unlikely for this Court to grant a certificate, thus indicating to the Sixth Circuit Court of Appeals that an issue merits review, when the Court has already determined that the action is so lacking in merit that service is not warranted. *See Love v. Butler*, 952 F.2d 10 (1st Cir. 1991) (it is “somewhat anomalous” for the court to summarily dismiss under Rule 4 and grant a certificate); *Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990) (requiring reversal where court summarily dismissed under Rule 4 but granted certificate); *Dory v. Comm’r of Corr. of New York*, 865 F.2d 44, 46 (2d Cir. 1989) (it was “intrinsically contradictory” to grant a certificate when habeas action

does not warrant service under Rule 4); *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983) (issuing certificate would be inconsistent with a summary dismissal).

The Sixth Circuit Court of Appeals has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Murphy*, 263 F.3d at 467. Consequently, this Court has examined each of Petitioner’s claims under the *Slack* standard. Under *Slack*, 529 U.S. at 484, to warrant a grant of the certificate, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* “A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, the Court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of Petitioner’s claims. *Id.*

The Court finds that reasonable jurists could not conclude that this Court’s dismissal of Petitioner’s claims was debatable or wrong. Therefore, the Court will deny Petitioner a certificate of appealability.

A Judgment and Order consistent with this Opinion will be entered.

Dated: May 25, 2018

[Handwritten signature of Gordon J. Quist]
Certified as a True Copy
By _____
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date 5/29/18

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT SMITH,

Petitioner, Case No. 1:18-cv-497

v. Honorable Gordon J. Quist

SHANE JACKSON,

Respondent.

JUDGMENT

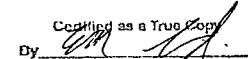
In accordance with the Opinion entered this day:

IT IS ORDERED that the petition for writ of habeas corpus is **DENIED WITH PREJUDICE** under Rule 4 of the Rules Governing § 2254 Cases for failure to raise a meritorious federal claim.

Dated: May 25, 2018

/s/ Gordon J. Quist

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

Certified as a True Copy
By 
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
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UNITED STATES DISTRICT COURT
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ORDER

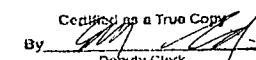
In accordance with the Opinion entered this day:

IT IS ORDERED that a certificate of appealability is **DENIED**.

Dated: May 25, 2018

/s/ Gordon J. Quist

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

Certifying as a True Copy
By 
Deputy Clerk
U.S. District Court
Western Dist. of Michigan
Date 5/29/18

FILED
 Oct 15, 2018
 DEBORAH S. HUNT, Clerk

SCOTT SMITH,)
)
 Petitioner-Appellant,)
)
 v.) **ORDER**
)
 SHANE JACKSON,)
)
 Respondent-Appellee.)

Scott Smith, a pro se Michigan prisoner, appeals the district court's judgment dismissing his petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court construes Smith's notice of appeal as an application for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b)(2). Smith also moves the court to proceed in forma pauperis on appeal.

In 2016, Smith pleaded no contest to a charge of second-degree criminal sexual conduct, was convicted, and was sentenced to 86 to 180 months in prison. The Michigan Court of Appeals denied Smith's delayed application for leave to appeal, and the Michigan Supreme Court denied leave to appeal, *People v. Smith*, 907 N.W.2d 578 (Mich. 2018) (mem.).

In May 2018, Smith filed a § 2254^{*} petition in the district court, seeking relief from his conviction on the ground that the trial court allegedly failed to rule on his pre-plea motion to dismiss based on the State's alleged failure to bring him to trial within 180 days as required by Michigan Compiled Laws § 780.131. The district court screened Smith's petition under Rule 4 of the Rules Governing § 2254 Cases and concluded that Smith was not entitled to relief because he presented only a non-cognizable state-law violation and in any event that his no-contest plea waived any pre-plea non-jurisdictional constitutional violations. The district court dismissed Smith's petition and declined to issue a COA.

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must demonstrate that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under the Antiterrorism and Effective Death Penalty Act, a district court shall not grant a habeas petition with respect to any claim that was adjudicated on the merits in the state courts unless the adjudication resulted in a decision that: (1) was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court; or (2) was based on an unreasonable determination of the facts in light of the evidence presented to the state courts. *See* 28 U.S.C. § 2254(d).

Smith's claim is based on a violation of state law and therefore is not cognizable in § 2254 proceedings. *See Cristini v. McKee*, 526 F.3d 888, 897 (6th Cir. 2008). Moreover, since the right to a speedy trial is not a jurisdictional issue, Smith's no-contest plea waived any claim that the State violated his constitutional rights by not bringing him to trial in a timely fashion. *See Howard v. White*, 76 F. App'x 52, 53 (6th Cir. 2003). Consequently, reasonable jurists would not debate the district court's disposition of Smith's petition.

Accordingly, the court DENIES Smith's COA application and DENIES as moot his motion to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk