UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1969

Shawn Canada

Petitioner - Appellant

v.

Eddie Miles

Respondent - Appellee

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:17-cv-01043-JNE)

JUDGMENT

Before WOLLMAN, BENTON and ERICKSON, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

July 26, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
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No: 18-1969

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Appellant

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Appellee

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:17-cv-01043-JNE)

ORDER

The petition for rehearing by the panel is denied.

October 01, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SHAWN CANADA,

Petitioner,

v.

Case No. 17-cv-1043 (JNE/SER)
ORDER

EDDIE MILES,

Respondent.

Petitioner Shawn Canada filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Respondent moved to dismiss the petition. In a Report and Recommendation dated November 22, 2017, United States Magistrate Judge Steven E. Rau recommended that Respondent's motion to dismiss be granted, that Canada's petition be dismissed, that the action be dismissed with prejudice, and that a certificate of appealability be denied. No timely objections were filed.

Based on a review of the record, the Court agrees with the Magistrate Judge's recommended disposition. Therefore, IT IS ORDERED THAT:

1. Respondent's motion to dismiss [ECF No. 9] is GRANTED.

2. Petitioner's petition under 28 U.S.C. § 2254 [ECF No. 1] is DENIED.

3. This action is DISMISSED WITH PREJUDICE.

4. A certificate of appealability is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 12, 2018

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Shawn Canada,

Petitioner,

v.

Eddie Miles,

Respondent.

Case No. 17-cv-1043 (JNE/SER)

REPORT AND RECOMMENDATION

STEVEN E. RAU, United States Magistrate Judge

The above-captioned case comes before the undersigned on Petitioner Shawn Canada's ("Canada") Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody ("Habeas Petition") [Doc. No. 1] and Respondent Eddie Miles's (the "State") Motion to Dismiss [Doc. No. 9]. This matter was referred for the resolution of pretrial matters pursuant to 28 U.S.C. § 636(b) and District of Minnesota Local Rule 72.1. For the reasons stated below, the Court recommends the Motion to Dismiss be granted, the Habeas Petition be denied, and this case be dismissed.

I. BACKGROUND

A. Background in State Court

Canada pleaded guilty to third-degree sexual assault for having sex with a woman who Canada knew was mentally impaired. *Canada v. State*, No. A13-0478, 2013 WL 6050382, at *1 (Minn. Ct. App. Nov. 18, 2013), *review denied* (Minn. Jan. 21, 2014). According to the plea agreement, the State would agree to a downward departure from the presumptive sentence if Canada was "found to be amenable to probation." *See id.* If not, "Canada could still argue for a downward departure, but the state could oppose the departure." *Id.* The presentence investigation report stated that Canada would not be amenable to supervision; nonetheless, Canada sought a

downward departure at his sentencing hearing. *Id.* His request was denied and the state district court "imposed the presumptive sentence of 62 months' imprisonment and ten years of conditional release" on November 22, 2010. *Id.*; *see also* Register of Actions, Case No. 55-CR-10-3516, *available at* http://pa.courts.state.mn.us/CaseDetail.aspx?CaseID=1613614566.

On November 19, 2012, Canada filed a petition for postconviction relief, arguing his guilty plea was neither voluntary nor entered into knowingly "because of his mental capacity issues" and should therefore be withdrawn.[1] *Canada*, 2013 WL 6050382, at *1 (internal quotation marks omitted). The state district court denied relief, and Canada appealed. *Id.* The Minnesota Court of Appeals affirmed. *Id.* On July 14, 2016, Canada filed a "Notice of Motion and Motion to Withdraw a Plea of Guilty." Register of Actions; (Ex. 1, Attached to Notice) [Doc. No. 13-1 at 2]. The state district court construed this motion as a second postconviction petition and denied relief because it was untimely and procedurally barred. Register of Actions; (Resp't's Mem. in Supp. of Mot. to Dismiss) [Doc. No. 10 at 3–4]. Canada did not appeal this decision. *See* (Resp't's Mem. in Supp. of Mot. to Dismiss at 4).

B. Background in Federal Court

Canada filed his Habeas Petition on April 4, 2017, raising two primary grounds for relief. In Ground One, he argues that he should be allowed to withdraw his guilty plea because individuals convicted of criminal sexual conduct must serve consecutive terms of supervised and conditional release. (Habeas Pet. at 5).[2] Therefore, the State offered him a plea agreement that was unlawful and unilaterally extended his sentence and these actions constitute "entrapment" and violations of "due process and double jeopardy." (Mem. in Supp. of Habeas Pet.) [Doc. No. 3 at 4); *see also* (*id.* at 2–7, 9, 14–15, 17–18, 21–24). In Ground Two, he argues, as he did in

[1] Canada did not file a direct appeal.

[2] The Court refers to page numbers assigned by CM/ECF.

state court, that his guilty plea should be withdrawn due to various mental incapacities. (Habeas Pet. at 7); (Mem. in Supp. of Habeas Pet. at 5, 15, 17). In Ground Three, Canada argues his due process rights were violated, his rights under the confrontation clause were violated, and that there was insufficient evidence to support his conviction. *See* (Habeas Pet. at 8). In Ground Four, Canada lists several state court cases and Amendments 5, 6, and 14 of the U.S. Constitution. (*Id.* at 10); *see also* (Mem. in Supp. of Habeas Pet. at 6–8).[3] In his memorandum, Canada argues that (1) his appellate counsel "left out key facts" in his postconviction petition; (2) "statements made by [Canada] at the time of his plea negated the existence of an essential element of the crime charged and were inconsistent with the plea"; (3) there is insufficient evidence to prove he is guilty; and (4) his sentence was extended due to his failure to participate in required treatment programs. (Mem. in Supp. of Habeas Pet. at 2, 19, 23–26). He also provides a list of legal phrases without any supporting facts or argument. (*Id.* at 9–13).

The State moved to dismiss, arguing that Canada's Habeas Petition was untimely and that he failed to exhaust his state court remedies. *See generally* (Resp't's Mem. in Supp. of Mot. to Dismiss). Canada opposed the motion, and the matter is now ripe for adjudication.[4] *See* (Mem. in Opp'n to Mot. to Dismiss) [Doc. No. 12]; (Notice) [Doc. No. 13].

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[3] Based on the argument provided in his memorandum, the Court understands these cases to be related to Grounds One and Two. *See* (Mem. in Supp. of Habeas Pet. at 6) (arguing "a guilty plea cannot be induced by unfulfilled or unfulfillable promises, including a sentence unauthorized by law").

[4] Canada's response suggested he might want to abandon this action. *See* (Notice) [Doc. No. 13 at 2] ("It's at this time I realize I'm moving to[o] fast and I do not want to move further with this lawsuit, requesting to dismiss the lawsuit."). The Court requested and received clarification from Canada that he does intend to move forward with his Habeas Petition. (Order Dated July 17, 2017) [Doc. No. 14]; (Mem.) [Doc. No. 16].

II. DISCUSSION

The Court concludes that Canada's Habeas Petition is untimely, and in the alternative, Canada is not entitled to habeas relief. Therefore, the Court recommends the Motion to Dismiss be granted and the Habeas Petition be denied.

A. Timeliness of Habeas Petition

1. Legal Standard

A federal court may review an application for a writ of habeas corpus filed on behalf of an individual under the judgment of a state court if the applicant "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") established that a state prisoner must file for the writ of habeas corpus within one year from the latest of the following dates:

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

§ 2244(d)(1). "The 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." § 2244(d)(2).

2. Analysis

a. Timeliness

Nothing in Canada's submissions to the Court suggest that clauses (B), (C), or (D) of § 2244(d)(1) apply.

> In other words, there is no suggestion that the State created any unconstitutional impediment that prevented [Canada] from seeking federal habeas relief within the prescribed one-year limitations period, and [Canada] has not shown that his current claims are based on any new, retroactively applicable, constitutional ruling, or any new and previously undiscoverable evidence that could extend the deadline for seeking federal habeas corpus relief.

See Abdulkader v. Minnesota, No. 11-cv-897 (DWF/JJG), 2011 WL 2960223, at *2 (D. Minn. Apr. 25, 2011) (Graham, Mag. J.), *adopted by* 2011 WL 2910569 (Frank, J.) (July 20, 2011).

Therefore, the one-year limitations period began the day Canada's judgment of conviction "became final by the conclusion of direct review or the expiration of the time for seeking such review." *See* 28 U.S.C. § 2244(d)(1)(A). Canada's conviction was entered and he was sentenced on November 22, 2010. *See* Register of Actions. His conviction became final ninety days later, on February 20, 2011. *See Gonzalez v. Thaler*, 565 U.S. 134, 150 (stating that "the judgment becomes final at the 'expiration of time for seeking such review'—when the time pursuing direct review in [the United States Supreme] Court, or in state court expires"); Minn. R. Crim. P. 28.02, subdiv. 4(3)(a) ("In felony and gross misdemeanor cases, an appeal by the defendant must be filed within 90 days after final judgment or entry of the order being appealed."). Therefore, Canada's time period to file for federal habeas relief began on February 20, 2011, and expired on February 20, 2012.

A filing for postconviction relief tolls the one-year time period. 28 U.S.C. § 2244(d)(2). Once the time period expires, however, a postconviction petition does not revive or restart the one-year period. *Ferguson v. Palmateer*, 321 F.3d 820, 823 (8th Cir. 2003) ("[S]ection 2244(d)

does not permit the reinitiation of the limitations period that has ended before the state petition was filed."). Canada did not file for postconviction relief until November 19, 2012, which was after the one-year limitations period expired. And because his first postconviction petition did not toll the statute of limitations, the second petition likewise does not toll the statute of limitations.

The Court concludes that Canada's Habeas Petition is untimely because Canada did not seek federal habeas relief until after the statute of limitations expired and because his postconviction petitions could not toll an already-expired statute of limitations period. *See Ferguson*, 321 F.3d at 823.

b. Equitable Tolling

Canada argues his Habeas Petition is entitled to equitable tolling due to his "mental impairment" and that the State's Motion to Dismiss and supporting documents contained false information. *See, e.g.*, (Mem. in Opp'n to Mot. to Dismiss at 3, 4).

"[Section] 2244(d) is subject to equitable tolling in appropriate cases." *Holland v. Florida*, 560 U.S. 631, 645 (2010); *see also Maghee v. Ault*, 410 F.3d 473, 476 (8th Cir. 2005). "[A] petitioner is entitled to equitable tolling only if he shows that (1) he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland*, 560 U.S. at 649 (internal quotation marks omitted).

As stated above, Canada argues his mental impairments warrant equitable tolling. *See, e.g.*, (Habeas Pet. at 3). "[M]ental impairment can be an extraordinary circumstance interrupting the limitation period," which depends on the impairment's "degree and duration." *Nichols v. Dormire*, 11 F. App'x 633, 634 (8th Cir. 2001) (per curiam). "[A] plaintiff seeking tolling on the ground of mental incapacity must come forward with evidence that a mental condition prevented

him from understanding and managing his affairs generally and from complying with the deadline he seeks to toll." *Jessie v. Potter*, 516 F.3d 709, 715 (8th Cir. 2008). In the federal habeas context, this District previously relied on a Second Circuit case that describes the particularized showing required to establish equitable tolling due to a mental impairment:

> [M]ental illness does not toll a filing deadline *per se*; determining whether equitable tolling is warranted in a given situation is a highly case-specific inquiry. The burden of demonstrating the appropriateness of equitable tolling for mental illness lies with the plaintiff; in order to carry this burden, she must offer a particularized description of how her condition adversely affected her capacity to function generally or in relationship to the pursuit of her rights. Therefore, in order to justify tolling of the AEDPA one-year statute of limitations due to mental illness, a habeas petitioner must demonstrate that her particular disability constituted an extraordinary circumstance severely impairing her ability to comply with the filing deadline, despite her diligent efforts to do so.

Bolarinwa v. Williams, 593 F.3d 226, 232 (2d Cir. 2010) (internal citations and quotation marks omitted); *see, e.g.*, *Williams v. Smith*, No. 15-cv-4042 (SRN/FLN), 2016 WL 2894859, at *5 (D. Minn. May 18, 20160 (Nelson, J.) (relying on *Bolarinwa*); *Waddell v. Symmes*, No. 09-cv-417 (JNE/AJB), 2010 WL 5804974, at *8 (D. Minn. Nov. 30, 2010) (Boylan, C. Mag. J.) (same), *adopted by* 2011 WL 573585 (Feb. 14, 2011) (Ericksen, J.), *aff'd* 446 F. App'x 821 (8th Cir. 2012) (per curiam).

Here, however, Canada offers conclusory statements and exhibits of limited probative value in support of his argument that his Habeas Petition is untimely due to his mental impairments. Canada provided some mental health records, but they do not, on their face, demonstrate a mental impairment that would severely impair Canada's ability to timely file his federal habeas petition. *See* (Exs.) [Doc. No. 1-1 at 48–73].[5] Further, Canada provides no other information—via argument or otherwise—that demonstrates that any mental health treatment he

[5] For ease of reference, the Court refers to the page number assigned by CM/ECF when referencing Canada's exhibits.

received as documented in the exhibits impacted his ability to file a federal habeas petition. Perhaps most importantly, these records are from 2009, and the time period during which Canada could seek federal habeas relief was between February 20, 2011, and February 20, 2012. Therefore, even if the records demonstrated a mental impairment, they do not do so for the applicable time period at issue. Canada also provided a document that appears to demonstrate that Canada's math skills are equivalent to a fourth-grade level. (Exs. at 75). Again, Canada does not offer an explanation regarding how his math skills impacted his ability to calculate the federal habeas time period.

Even if all of Canada's evidence and arguments are fully credited, he has failed to offer a "particularized description of how [his] condition adversely affected [his] capacity to function generally or in relationship to the pursuit of [his] rights." *See Bolarinwa*, 593 F.3d at 232. Additionally, nothing in the record before this Court, or the Minnesota Court of Appeals, suggests that such evidence is available, and therefore, an evidentiary hearing is not warranted on whether Canada's alleged mental impairments should toll the statute of limitations. *See Canada*, 2013 WL 6050382, at *2 (noting that Canada presented only his own assertions in support of his desire to withdraw his guilty plea based on mental impairments and that his "presentence investigation and psychosexual evaluation do not discuss him being a vulnerable adult or the possibility that Canada lacks understanding of the proceedings or legal system"). Therefore, the Court concludes that Canada has not identified an extraordinary circumstance that prevented his timely filing of his federal habeas petition, and equitable tolling does not apply to Canada's untimely Habeas Petition.

Even if Canada's Habeas Petition was timely, however, he would not be entitled to relief.

B. Merits[6]

Only one of Canada's claims—that he should be entitled to withdraw his guilty plea because it was not knowing, voluntary, or intelligent—is exhausted. Even if this claim was timely filed, the Court concludes Canada would not be entitled to habeas relief. Additionally, Canada's remaining claims are procedurally defaulted, which also prevent this Court from recommending any habeas relief.

1. Legal Standard

A federal district court may entertain a state prisoner's application for a writ of habeas corpus only when the petitioner has exhausted the state court remedies. 28 U.S.C. § 2254(b)(1); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). The exhaustion requirement has been summarized as follows:

> Before seeking a federal writ of habeas corpus, a state prisoner must exhaust available state remedies, thereby giving the State the opportunity to pass upon and correct alleged violations of its prisoners' federal rights. To provide the State with the necessary opportunity, the prisoner must fairly present his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim.

Baldwin v. Reese, 541 U.S. 27, 29 (2004) (internal citations and quotation marks omitted). To exhaust state court remedies, a petitioner must fairly present his constitutional claims to the highest available state court before seeking relief in federal court. *O'Sullivan*, 526 U.S. at 845. Claims are considered fairly presented "if the state court rules on the merits of [a petitioner's]

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[6] Typically, a merits analysis involves a review of the state court records, including transcripts and briefs. *See* Rule 5, Rules Governing Section 2254 Cases. In this case, however, the State did not provide that information, likely based on its argument that the Habeas Petition is untimely. The exhibits that Canada submitted do not include the transcript from the plea hearing or the briefs he or his attorney submitted to the Minnesota Court of Appeals.

Nonetheless, the Court provides an alternative analysis to demonstrate that even if Canada's Habeas Petition were timely, he would not be entitled to relief. The Court relies on the Court of Appeals's recitation of Canada's claims for this analysis.

claims, or if [the petitioner] presents his claims in a manner that entitles him to a ruling on the merits." *Gentry v. Lansdown*, 175 F.3d 1082, 1083 (8th Cir. 1999). Thus, a claim has not been fairly presented if a state appellate court expressly declines to address it on the merits because the petitioner violated state procedural rules. *Hall v. Delo*, 41 F.3d 1248, 1250 (8th Cir. 1994).

When a petition contains claims that have not been fairly presented, a court must determine whether state procedural rules would allow hearing on the merits. *McCall v. Benson*, 114 F.3d 754, 757 (8th Cir. 1997). Generally, "[w]hen a state court remedy is available for a state prisoner's unexhausted claim, the federal habeas court must defer action until the claim is exhausted, either by dismissing the federal petition without prejudice or by using the 'stay and abeyance' procedure described in *Rhines v. Weber*, [544 U.S. 269] . . . (2005)." *Armstrong v. Iowa*, 418 F.3d 924, 926 (8th Cir. 2005).

If, however, the state's procedural rules preclude a hearing on the merits, the petitioner's claims are procedurally defaulted and no federal habeas review of that claim is possible. *McCall*, 114 F.3d at 757. Thus, when a petitioner has not exhausted the state court remedies for a claim and state procedural rules preclude any further attempts to satisfy the exhaustion requirement as to that claim, then the claim is not truly unexhausted; rather, the claim is procedurally defaulted. *See id.* If a state prisoner presented a federal claim to a state court but the claim is procedurally improper, the claim is also procedurally defaulted. *See Coleman v. Thompson*, 501 U.S. 722, 732 (1991).

A federal court may not review a procedurally defaulted claim on its merits unless a petitioner "can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Id.* at 750.

2. Analysis

a. Exhausted Claim

Canada's claim that his guilty plea was not knowing, voluntary, and intelligent was raised in his postconviction petition and reviewed by the Minnesota Court of Appeals. *See generally Canada*, 2013 WL 6050382. Further, Canada sought the Minnesota Supreme Court's review, thereby exhausting his state court remedies. *O'Sullivan*, 526 U.S. at 845.

Under the relevant portion of AEDPA, a person in state custody may be granted a writ of habeas corpus if the state court's adjudication on the merits "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." 28 U.S.C. § 2254(d)(1). The Eighth Circuit has explained:

> A state court decision is "contrary to" clearly established federal law if it either "arrives at a conclusion opposite that reached by [the Supreme] Court on a question of law" or "decides a case differently than th[e] [Supreme] Court has on a set of materially indistinguishable facts." A state court "unreasonably applies" Supreme Court precedent if it "identifies the correct governing legal principle from th[e] [Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case."

Worthington v. Roper, 631 F.3d 487, 495 (8th Cir. 2011) (alterations in original) (citations omitted) (quoting *Williams v. Taylor*, 529 U.S. 362, 412–13 (2000)). Additionally, a petition for a writ of habeas corpus may also be granted if the state court's resolution of a prisoner's criminal case is "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). In other words, habeas relief may be available if the conviction at issue is based on findings of fact that could not reasonably be derived from the state court evidentiary record. *See id.*

Nonetheless, a federal district court is not allowed to conduct its own *de novo* review of a prisoner's constitutional claims. *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004) ("We cannot

grant relief under AEDPA by conducting our own independent inquiry into whether the state court was correct as a *de novo* matter."). "AEDPA . . . imposes a highly deferential standard for evaluating state-court rulings, and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (citations and quotations omitted). Habeas relief cannot be granted unless the petitioner has identified, and substantiated, a specific error committed by the state courts. *See Harrington v. Richter*, 562 U.S. 86, 100–01 (2011) (explaining the burdens faced by a federal habeas petitioner seeking relief based on an alleged error by the state court). Specifically, the petitioner must show that the error is one that is actionable under § 2254(d). *See id.* The petitioner "must 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." *Id.* at 103.

> A guilty plea is invalid only if it does not represent a voluntary and intelligent choice among the alternative courses of action open to the defendant. A defendant must have knowledge of the law in relation to the facts for the plea to be truly voluntary. It is sufficient if the defendant is given notice of the charge or if he in fact knows of and understands that charge.

Easter v. Norris, 100 F.3d 523, 525 (8th Cir. 1996) (citations omitted).

Canada makes no specific argument—other than his broadly asserted mental impairments—regarding why his plea was not knowing, voluntary, or intelligent. Notably, even a mentally impaired individual may enter a knowing, voluntary, and intelligent guilty plea. *See Bailey v. Weber*, 295 F.3d 852, 855–56 (8th Cir. 2002) (concluding a state supreme court's finding that an intellectually disabled defendant adequately understood the nature of the charges against him and consequences of a guilty plea was supported by the record and was not "contrary to nor an unreasonable application of clearly established federal law").

Nothing in the Minnesota Court of Appeals's description of the proceedings, Canada's argument, or mental health records suggest that the state court's denial of Canada's postconviction petition was contrary to or an unreasonable application of federal law or involved an unreasonable determination of facts in light of the evidence presented. The petition for Canada's guilty plea—which he signs—acknowledged that he has "talked with or been treated by a psychiatrist or other person for a nervous or mental condition," but states that he has not "been a patient in a mental hospital." (Exs. at 20). It states that Canada had not been ill and did not recently take pills or other medications. (*Id.* at 21). Therefore, even if Canada's Habeas Petition was timely, he would not be entitled to habeas relief on the grounds that his guilty plea was not knowing, voluntary, or intelligent.

b. Unexhausted Claims

As stated above, Canada makes several other arguments in support for his request for federal habeas relief. *See* (Habeas Pet.); (Mem. in Supp. of Habeas Pet.). The only claim Canada presented to the state courts, however, was his claim that his guilty plea was not knowing, voluntary, or intelligent. *See generally Canada*, 2013 WL 6050382. Therefore, Canada's remaining claims are unexhausted. *See Baldwin*, 541 U.S. at 29.

The Court next considers whether a state procedural rule precludes a hearing on the merits. *McCall*, 114 F.3d at 757. Minnesota law provides that all matters raised in a petitioner's direct appeal and all claims known but not raised are barred from consideration in a subsequent postconviction petition. *Id.* (citing *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976)). This is often referred to as the *Knaffla* rule. *See Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007).

Under *Knaffla*, Minnesota law prevents further review of Canada's claims because Canada knew or should have known of these claims at the time of his postconviction petition.[7] For example, on September 27, 2012, Canada was notified that his sentence was adjusted on based on *State ex rel. Peterson v. Fabian*, 784 N.W.2d 843 (Minn. Ct. App. 2010). (Exs. at 33). This adjustment meant that Canada's term of conditional release could not begin until his sentence, including supervised release, expired. (*Id.*); *see also Peterson*, 784 N.W.2d at 846. Canada therefore knew that his conditional-release date had been extended prior to filing his first postconviction petition on November 19, 2012. Any constitutional claims based on the change to his sentence are therefore barred under *Knaffla.* Likewise, many of Canada's other claims are based on errors he asserts related to his guilty plea, which he knew of at the time of his first postconviction petition. *See, e.g.*, (Mem. in Supp. of Habeas Pet. at 19) (arguing that "statements made by [Canada] at the time of his plea negated the existence of an essential element of the crime charged and were inconsistent with the plea" and that there is insufficient evidence to prove he is guilty).

In passing, Canada makes an argument that could be generously construed to make a claim of ineffective assistance of appellate counsel. *See* (*id.* at 2, 23). Because there was no direct appeal, the only "appellate counsel" at issue is the attorney who filed his appeal of his first postconviction petition. At that time, he could not have known that appellate counsel was ineffective. But he already filed a second postconviction petition, and "matters raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in

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[7] The exceptions to *Knaffla* include "(1) a claim that is so novel that the legal basis was not available on direct appeal or (2) a claim that the petitioner did not deliberately and inexcusably fail to raise on direct appeal when fairness requires its consideration." *Dukes v. State*, 621 N.W.3d 246, 251 (Minn. 2001) (internal quotation marks omitted). Nothing suggests that either exception is applicable to Canada's unexhausted claims.

subsequent petitions for postconviction relief." *Powers*, 731 N.W.2d at 501. Further, there is a two-year statute of limitations to file a postconviction petition.[8] Minn. Stat. § 590.01, subdiv. 4. For the purposes of postconviction relief, Canada's conviction became final on November 22, 2010. *See id.*; Register of Actions. Therefore, any claims Canada could have raised in a postconviction petition must have been raised on or before November 22, 2012, and are now time barred. Canada cannot now file a third postconviction petition based on ineffective assistance of appellate counsel because he knew about this ineffective assistance of appellate counsel claim at the time of his second postconviction petition and because any such petition is now time barred. Canada's remaining claims are likewise barred either because he knew or should have known about them at the time of his first postconviction appeal, or because he knew or should have known about them at the time of his second postconviction appeal and they are now time barred.

In summary, even if Canada's remaining claims were timely filed—which they are not—they are procedurally defaulted, preventing federal habeas relief.

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[8] Although some exceptions apply, none of these exceptions relate to Canada's claims. Minn. Stat. 590.01, subdiv. 4(b) (excusing the statute of limitations deadline if "(1) the petitioner establishes that a physical disability or mental disease precluded a timely assertion of the claim; (2) the petitioner alleges the existence of newly discovered evidence, including scientific evidence, that could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition, and the evidence is not cumulative to evidence presented at trial, is not for impeachment purposes, and establishes by a clear and convincing standard that the petitioner is innocent of the offense or offenses for which the petitioner was convicted; (3) the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case; (4) the petition is brought pursuant to subdivision 3; or (5) the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice").

C. Conclusion

The Court concludes Canada's Habeas Petition is untimely because it was filed after the statute of limitations expired. Even if it was filed timely, his exhausted claim does not warrant habeas relief, and his remaining claims are procedurally defaulted. Therefore, the Court recommends granting the Motion to Dismiss and denying the Habeas Petition.

III. CERTIFICATE OF APPEALABILITY

A § 2254 habeas corpus petitioner cannot appeal a denial of his petition unless he is granted a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A COA cannot be granted unless the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

> When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In this case, the Court finds it unlikely that any other court, including the Eighth Circuit Court of Appeals, would decide Canada's claims any differently than they have been decided here. Canada has not identified (and the Court cannot independently discern) anything novel, noteworthy, or worrisome about this case that warrants appellate review. Therefore, the Court recommends that Canada not be granted a COA in this matter.

IV. RECOMMENDATION

Based upon all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

1. Respondent Eddie Miles's Motion to Dismiss [Doc. No. 9] be **GRANTED**;

2. Petitioner Shawn Canada's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [Doc. No. 1] be **DENIED**;

3. This action be **DISMISSED WITH PREJUDICE**; and

4. If this Report and Recommendation is adopted, a certificate of appealability should not issue, and judgment should be entered accordingly.

Dated: November 22, 2017

s/Steven E. Rau
STEVEN E. RAU
United States Magistrate Judge

Notice

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore, not appealable directly to the Eighth Circuit Court of Appeals.

Under D. Minn. LR 72.2(b)(1) "a party may file and serve specific written objections to a magistrate judge's proposed findings and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).