FILED: June 26, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6085
(0:17-cv-00461-JMC)

RONNIE W. WILSON

Petitioner - Appellant

v.

WARDEN BUSH

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6085

RONNIE W. WILSON,

Petitioner - Appellant,

v.

WARDEN BUSH,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. J. Michelle Childs, District Judge. (0:17-cv-00461-JMC)

Submitted: June 21, 2018 Decided: June 26, 2018

Before DIAZ and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Ronnie W. Wilson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ronnie W. Wilson seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2012) petition. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2012). The magistrate judge recommended that relief be denied and advised Wilson that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140 (1985). Wilson has waived appellate review by failing to timely file objections after receiving proper notice. Accordingly, we deny a certificate of appealability and dismiss the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Ronnie W. Wilson, Petitioner, v. Warden Bush, Respondent.	)	Civil Action No.: 0:17-cv-00461-JMC **ORDER**

This matter is before the court upon review of the Magistrate Judge's Report and Recommendation ("Report") (ECF No. 41), filed on October 16, 2017, recommending that the court grant Respondent's Motion for Summary Judgment (ECF No. 16), and dismiss Petitioner's Petition for Writ of Habeas Corpus ("Petition") (ECF No. 1) as untimely pursuant to the one-year statute of limitations set forth in 28 U.S.C. § 2244(d).

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, which has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made. Fed. R. Civ. P. 72(b)(2)-(3).

The parties were advised of their right to file objections to the Report. (ECF No. 41 at 13.) However, neither party filed any objections to the Report.[1]

[1] The court notes that Petitioner filed a "Motion for Procedural Default Not to be Granted to Warden Bush", which was received by the Prison Mailroom on November 13, 2017 (ECF No. 46-1) and by the Clerk's Office on November 15, 2017. The Motion was styled as an objection to the Report (ECF No. 46), but all objections were due by November 2, 2017 (objections were due by

In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (*quoting* Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *see Wells v. Shriners Hosp.*, 109 F.3d 198, 200 (4th Cir. 1997) ("[t]he Supreme Court has authorized the waiver rule that we enforce. . . . '[A] court of appeals may adopt a rule conditioning appeal, when taken from a district court judgment that adopts a magistrate's recommendation, upon the filing of objections with the district court identifying those issues on which further review is desired.'") (citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)).

After a thorough review of the Report and the record in this case, the court finds the Report provides an accurate summary of the facts and law. Petitioner has not shown that he has been pursuing his rights diligently or that some extraordinary circumstance exists that would entitle him to equitable tolling. (ECF No. 41 at 11.) Therefore, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 41) **GRANTING** Respondent's Motion for Summary Judgment (ECF No. 16). Petitioner's Petition (ECF No. 1) is **DISMISSED** as untimely pursuant to the one-year statute of limitations set forth in 28 U.S.C. § 2244(d). Because the court dismisses Petitioner's Petition, his Motion for Copies and for Return of Videotape (ECF No. 50) is **MOOT**.

October 30, 2017, but an additional three days were added for mailing). Therefore, Petitioner's Objection is untimely. Moreover, Petitioner's objections are not specific in nature. *See* Fed. R. Civ. P. 72(b)(2)-(3).

CERTIFICATE OF APPEALABILITY

The law governing certificates of appealability provides that:

> (c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.
> (c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable judges would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See, e.g., Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

December 28, 2017
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ronnie W. Wilson,	)	C/A No. 0:17-461-JMC-PJG
	)	
Petitioner,	)	
	)	
vs.	)	**REPORT AND RECOMMENDATION**
	)	
Warden Bush,	)	
	)	
Respondent.	)	
	)	

Petitioner Ronnie W. Wilson, a self-represented state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for a Report and Recommendation on the respondent's motion for summary judgment. (ECF No. 16.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised the petitioner of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to the respondent's motion. (ECF No. 18.) Wilson filed a response in opposition (ECF No. 29), and the respondent replied (ECF No. 34). Having carefully considered the parties' submissions and the record in this case, the court finds that Wilson's Petition is barred by 28 U.S.C. § 2244(d) as untimely.

BACKGROUND

Wilson was indicted in July 2007 in Georgetown County for burglary in the first degree, kidnapping, criminal domestic violence of a high and aggravated nature ("CDVHAN"), and possession of a weapon during the commission of a violent crime. (App. at 556-61, ECF No. 15-3 at 58-63.) Wilson was represented by C. Reuben Goude, Esquire, and on November 26-29, 2007 was tried by a jury and found guilty of the charges of kidnapping and CDVHAN. (App. at 395-96,

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ECF No. 15-2 at 61-62.) The circuit court sentenced Wilson to twenty-two years' imprisonment for kidnapping, and ten years' imprisonment for CDVHAN, both sentences to be served concurrently. (App. at 406, ECF No. 15-2 at 72.)

Wilson timely appealed and was represented by Kathrine H. Hudgins, Esquire, Assistant Appellate Defender with the South Carolina Commission of Indigent Defense, who filed a final brief on Wilson's behalf. (App. at 409-19, ECF No. 15-2 at 74-84.) On August 11, 2010, the South Carolina Court of Appeals affirmed Wilson's convictions and sentences. (State v. Wilson, 698 S.E.2d 862 (S.C. Ct. App. 2010), App. at 434-37, ECF No. 15-2 at 99-102.) The remittitur was issued on September 2, 2010 and filed with the Georgetown County Clerk of Court on September 13, 2010. (App. at 438, ECF No. 15-2 at 103.)

Wilson filed a *pro se* application for post-conviction relief on May 4, 2011 ("2011 PCR"). (Wilson v. State of South Carolina, 2011-CP-22-614, App. at 439-44, ECF No. 15-2 at 104-09.) The State filed a return. (App. at 445-49, ECF No. 15-2 at 110-14.) On August 27, 2012, the PCR court held a hearing at which Wilson appeared and testified was represented by Louis Henry Hutto, III, Esquire. By order filed September 24, 2012, the PCR court denied and dismissed Wilson's PCR application with prejudice. (App. at 549-55, ECF No. 15-3 at 51-57.) Wilson did not appeal the PCR court's order.

Wilson filed a second *pro se* application for post-conviction relief on February 19, 2014 ("2014 PCR"), raising as one of his issues that his prior PCR counsel failed to file an appeal from the denial of his 2011 PCR application. (Wilson v. State of South Carolina, 2014-CP-22-137, App. at 562-70, ECF No. 15-3 at 64-72.) The State filed a return and motion to dismiss. (App. at 571-78, ECF No. 15-3 at 73-80.) On February 5, 2015, the PCR court held a hearing at which Wilson

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appeared and was represented by Stephen W. Fowler, Esquire. On February 26, 2015, the PCR court issued an order granting Wilson leave to file a belated petition to seek appellate review of his 2011 PCR application pursuant to Austin v. State[1] and dismissing all other issues in Wilson's 2014 PCR application with prejudice as successive. (App. at 600-05, ECF No. 15-3 at 102-07.)

Wilson appealed. In his PCR appeal, Wilson was represented by Appellate Defender Tiffany L. Butler, Esquire, of the South Carolina Commission on Indigent Defense, who filed a petition for a writ of certiorari and a petition for a writ of certiorari pursuant to Austin v. State on Wilson's behalf. (ECF Nos. 15-8 & 15-9.) On December 16, 2016, the South Carolina Supreme Court issued an Order in which it granted the petition for a writ of certiorari pursuant to Austin v. State and, after Austin review, denied Wilson's petition for a writ of certiorari from the final order in the 2011 PCR action. (ECF No. 15-12.) The remittitur was issued January 4, 2017 and filed with the Georgetown County Clerk of Court on January 6, 2017. (ECF No. 15-13.)

Wilson filed the instant Petition for a writ of habeas corpus on February 13, 2017.[2] (ECF No. 1.)

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[1] Austin v. State, 409 S.E.2d 395 (S.C. 1991). "Under Austin, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal." Odom v. State, 523 S.E.2d 753 (S.C. 1999); see also King v. State, 417 S.E.2d 868 (S.C. 1992) (explaining the appellate procedure in an Austin matter).

[2] There is no stamp from the prison mailroom on the envelope containing the Petition. However, based on the return address and the postmark zip code, it appears that this Petition was mailed from the prison. Therefore, this date reflects the date that the envelope was postmarked. See Houston v. Lack, 487 U.S. 266 (1988) (stating that a prisoner's pleading is filed at the moment of delivery to prison authorities for forwarding to the district court). However, even considering the date that Wilson signed his Petition (February 10, 2017) would not render Wilson's Petition timely filed within the applicable statute of limitations.

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DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate only if the moving party "shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party may support or refute that a material fact is not disputed by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Rule 56 mandates entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); Celotex Corp., 477 U.S. at 322. Further, while the federal court is charged with liberally construing a petition filed by a *pro se* litigant to allow the development of a potentially meritorious case, see, e.g.,

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Cruz v. Beto, 405 U.S. 319 (1972), the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

B. Statute of Limitations

The respondent argues that Wilson's Petition is untimely under the one-year statutory deadline set forth in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). The one-year time period runs from the latest of "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); see Gonzalez v. Thaler, 565 U.S. 134, 132 S. Ct. 641 (2012). Because Wilson filed a direct appeal, his conviction became final on August 26, 2010 the expiration of the time in which Wilson could have timely filed a petition for rehearing with the South Carolina Court of Appeals following the issuance of the South Carolina Court of Appeals's order affirming Wilson's

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convictions and sentences.[3] See Rule 221(a), SCACR (instructing that a petition for rehearing "must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court"); Gonzalez, 132 S. Ct. at 653-54 ("[B]ecause [petitioner] did not appeal to the State's highest court, his judgment became final when his time for seeking review with the State's highest court expired."). Accordingly, the limitations period began to run on August 27, 2010 and expired August 26, 2011, unless the period was at any time tolled for any properly filed state PCR application. 28 U.S.C. § 2244(d)(2); see also Hernandez v. Caldwell, 225 F.3d 435, 438-39 (4th Cir. 2000) (applying the anniversary date method in calculating the one-year limitation period in § 2244 and concluding that "the actual count on the limitations period began on April 25, 1996, and ended on April 24, 1997, excluding any time tolled").

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[3] Because Wilson did not seek certiorari from the South Carolina Supreme Court, he is not entitled to an additional tolled time period of ninety days in which to seek certiorari review from the United States Supreme Court. Hammond v. Hagan, C/A No. 4:07-1081-JFA, 2008 WL 2922860, *3 (D.S.C. July 24, 2008); see also 28 U.S.C. § 1257 ("Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . ."); U.S. Sup. Ct. R. 10(b) (stating that certiorari is considered where "state court of last resort" has decided an important federal question); U.S. Sup. Ct. R. 13 (stating that the time period for a petition for a writ of certiorari is ninety days from the decision or judgment of a state court of last resort). The respondent includes in its tolling calculation the additional ninety days to seek certiorari review from the United States Supreme Court, citing State v. Lyles, 673 S.E.2d 811 (S.C. 2009), for the proposition that seeking rehearing from the South Carolina Court of Appeals and certiorari from the South Carolina Supreme Court is not required for purposes of exhausting state remedies. (Respt.'s Mem. Supp. Summ. J., ECF No. 15 at 15.) The South Carolina Supreme Court held in Lyles that it "will no longer entertain petitions for writs of certiorari where the Court of Appeals has dismissed an appeal after conducting an Anders review." Lyles, 673 S.E.2d at 813. Initially, the court notes that Wilson's appeal did not involve Anders review. Moreover, while it is true that seeking rehearing from the South Carolina Court of Appeals and certiorari from the South Carolina Supreme Court may not be required for the exhaustion of state remedies, failure to do so following issuance of a decision on the merits by the Court of Appeals does not entitle a petitioner to the additional ninety days of tolled time for purposes of § 2244(d)(1)(A). See, e.g., Gonzalez, 132 S. Ct. at 653-54 (holding that a judgment becomes final when the time period for seeking direct review expires, and that state law procedures determine deadlines when a petitioner forgoes state court appeals).

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Wilson filed his first state PCR application on May 4, 2011. At that point, 250 days of non-tolled time had accrued since the period of limitations began to run. The period of limitations was tolled during the pendency of the 2011 PCR action. The PCR court filed its order dismissing Wilson's petition on September 24, 2012. As no appeal was filed from this order, this decision became final on October 24, 2012 thirty days after the entry of the order pursuant to Rule 203(b)(1), SCACR. See, e.g., Allen v. Mitchell, 276 F.3d 183, 185 (4th Cir. 2001) (indicating that the statute of limitations is tolled pursuant to § 2244(d)(2) during the "Appeal Period," which is defined as "the interval between the lower court decision and the deadline for seeking review") (citing Taylor v. Lee, 186 F.3d 557, 561 (4th Cir. 1999)). At that time, Wilson had 115 days of statutory time remaining, which means that Wilson had until February 18, 2013[4] to file a timely federal habeas corpus petition.

Wilson filed a second PCR application on February 19, 2014. However, this application did not toll the statute of limitations for the instant federal Petition because it was filed after the expiration of the one-year limitations period under § 2244(d)(1)(A). To toll the one-year statute of limitations period governing federal habeas petitions, state PCR proceedings must commence prior to the expiration of the federal statutory period. See 28 U.S.C. § 2244(d). Even though the court granted Wilson a belated appeal in his 2014 PCR action pursuant to Austin from his 2011 PCR application, this does not entitle Wilson to toll the time between the PCR actions. See McHoney v. South Carolina, 518 F. Supp. 2d 700, 705 (D.S.C. 2007) (finding that no collateral action was

[4] February 16, 2013 was a Saturday; therefore, Wilson had until Monday, February 18, 2013 to file his federal habeas petition. See Fed. R. Civ. P. 6(a)(3); see also Rules Governing § 2254 Cases, Rule 11, 28 U.S.C. foll. § 2254 ("The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.").

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"pending," as defined by the AEDPA, during the time between the state court's initial denial of the PCR application and the state court's allowance of a belated appeal of that PCR application and thus the AEDPA's limitations period was not tolled during this time); Hepburn v. Eagleton, C/A No. 6:11-cv-2016-RMG, 2012 WL 4051126, at *3 (D.S.C. Sept. 13, 2012) (same); see also Evans v. Chavis, 546 U.S. 189, 192 (2006) ("[T]he time that an application for state postconviction review is 'pending' includes the period between (1) a lower court's adverse determination, and (2) the prisoner's filing of a notice of appeal, *provided that* the filing of the notice of appeal is timely under state law.") (emphasis in original); Moore v. Crosby, 321 F.3d 1377, 1381 (11th Cir. 2003) ("The statutory tolling provision does not encompass a period of time in which a state prisoner does not have a 'properly filed' post-conviction application actually pending in state court."). Thus, Wilson's 2014 PCR application did not toll or revive the already expired statute of limitations for filing his federal habeas action. Wilson's federal Petition was filed on February 13, 2017 almost four years after the expiration of the statute of limitations.

C. Wilson's Arguments

Wilson appears to make two arguments in response to the respondent's argument that his federal Petition was untimely filed. (See Petr.'s Resp. Opp'n Mot. Summ. J., ECF No. 29.) Specifically, Wilson appears to contend in connection with the issue of timeliness: (1) that he has been pursuing his rights diligently; and (2) his Petition was timely filed because it was filed within one year from the issuance of the PCR court's December 16, 2016 order denying his 2014 PCR application. (ECF No. 29-1 at 13-15.) Wilson also points out that he was not notified by his 2011 PCR counsel of the PCR court's September 24, 2012 decision until over a year after the decision was issued, thereby losing his opportunity to file an appeal, and also attaches a letter received from his

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2014 PCR counsel which Wilson interprets as informing him of the PCR court's December 16, 2016 order being the start of Wilson's one-year statute of limitations. (Id.)

To avoid application of the statute of limitations to the instant federal habeas corpus Petition, Wilson must show that the one-year limitations period should be equitably tolled under applicable federal law. See Holland v. Florida, 560 U.S. 631 (2010) (concluding that § 2244(d) is subject to the principles of equitable tolling); Harris v. Hutchinson, 209 F.3d 325 (4th Cir. 2000) (same). "Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005); see also Holland, 560 U.S. at 649. Equitable tolling is available only in "those rare instances where due to circumstances external to the party's own conduct it would be unconscionable to enforce the limitation period against the party and gross injustice would result." Rouse v. Lee, 339 F.3d 238 (4th Cir. 2003) (*en banc*) (internal quotation marks and citation omitted); see also United States v. Sosa, 364 F.3d 507, 512 (4th Cir. 2004). Thus, to be entitled to equitable tolling, an otherwise time-barred petitioner must present: "(1) extraordinary circumstances, (2) beyond his control or external to his own conduct, (3) that prevented him from filing on time." Rouse, 339 F.3d at 246.

Wilson has not established grounds for equitable tolling. The court observes that attorney misconduct that is beyond a garden-variety claim of attorney negligence may present a basis for equitable tolling. See Holland, 560 U.S. at 633. Even assuming without deciding that Wilson's 2011 PCR counsel's alleged failure to notify him of the PCR court's decision with regard to his 2011 PCR application rises above the level of garden variety attorney negligence, Wilson has failed to show that he has been diligently pursuing his rights in that he waited for two months after this

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discovery to file his 2014 PCR application and *several years* after this discovery to file his federal habeas petition. Moreover, Wilson testified in his 2014 PCR hearing that he "waited patiently for a whole year" to hear from his 2011 PCR counsel before "writ[ing] to the courts" in an attempt to seek a belated PCR appeal. (App. at 590, ECF No. 15-3 at 92.) Accordingly, this court cannot say that Wilson has been pursuing his rights diligently. See Harris, 209 F.3d at 330 ("Under long-established principles, petitioner's lack of diligence precludes equity's operation."); Pace, 544 U.S. at 419 (denying equitable tolling to a habeas petitioner who waited years to file his PCR petition and months after his PCR trial to seek relief in federal court).

Additionally, Wilson cannot show that the advice given to him in a letter from his 2014 PCR counsel rises above the level of garden variety attorney negligence, because it is clear that Wilson misunderstands his counsel's statement regarding the date of commencement of the one-year statute of limitations. In the letter, PCR counsel simply informs Wilson that, "[t]here is now a **one-year statute of limitations for filing an application for a writ of habeas corpus in federal court**," and advises Wilson that the time between his direct appeal and the filing of his PCR application counts against his federal habeas statute of limitations. (ECF No. 29-1 at 15.) It is well recognized that ignorance of the law does not warrant equitable tolling. See Cross-Bey v. Gammon, 322 F.3d 1012, 1015 (8th Cir. 2003) (rejecting equitable tolling where a petitioner alleged lack of legal knowledge or legal resources); Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000) ("[I]t is well established that ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing.") (internal quotation marks and citations omitted); Jones v. South Carolina, C/A No. 4:05-2424-CMC-TER, 2006 WL 1876543, at *3 (D.S.C. June 30, 2006) ("Other courts addressing equitable tolling have found that 'extraordinary circumstances' are *not*: having an inadequate law

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library, . . . claims of actual innocence, reliance on other inmates' advice, ignorance of the AEDPA filing deadline, or even (in some instances) petitioner illness."); see also Owens, 235 F.3d 356, 359 (7th Cir. 2000) ("Owens is young, has a limited education, and knows little about the law. If these considerations delay the period of limitations until the prisoner has spent a few years in the institution's law library, however, then § 2244(d)(1) might as well not exist; few prisoners are lawyers.").

Moreover, as stated above, § 2244(d)(1)(A) is clear that the one-year statute of limitations 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); see Harris, 209 F.3d at 327-28 (holding that while state collateral review of a properly filed petition tolls the one-year statute of limitations under § 2244(d) (A), it does not establish a right to file within one year after completion of collateral review). Further, although § 2244(d)(2) provides that the time that any properly filed PCR or other collateral review is pending will not be counted toward any period of limitation, Wilson's 2014 PCR application did not toll the statute of limitations for the instant federal Petition because it was filed after the expiration of the one-year limitations period under § 2244(d)(1)(A), and to toll the one-year statute of limitations period governing federal habeas petitions, state PCR proceedings must commence prior to the expiration of the federal statutory period. See 28 U.S.C. § 2244(d).

In summary, for the reasons stated above, Wilson cannot show that he has been pursuing his rights diligently or that some extraordinary circumstance stood in his way such that he is entitled to equitably toll the one-year statute of limitations. Rouse, 339 F.3d at 246.

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RECOMMENDATION

Based upon the foregoing, the court finds that Wilson's Petition was not timely filed and is therefore barred by the applicable statute of limitations. Accordingly, the court recommends that the respondent's motion for summary judgment (ECF No. 16) be granted and Wilson's Petition dismissed as untimely.[5]

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

October 16, 2017
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

[5] Wilson has also filed a motion in which he asks to submit videotape evidence in the form of a DVD related to the merits of Ground Four of his Petition. (ECF No. 37.) In light of the court's recommendation that Wilson's Petition was untimely filed, Wilson's motion should be denied as moot.

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