

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 26, 2018
DEBORAH S. HUNT, Clerk

WALLACE G. CARLYLE,

)

Petitioner-Appellant,

)

v.

)

O R D E R

SHERMAN CAMPBELL, Warden,

)

Respondent-Appellee.

)

)

Wallace G. Carlyle, a Michigan prisoner proceeding pro se, appeals a district court judgment dismissing his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Carlyle has filed an application for a certificate of appealability and a supplemental motion in support of his application.

In November 2009, Carlyle was sentenced to 144 to 270 months of imprisonment after pleading guilty to third-degree sexual conduct in violation of Michigan Compiled Laws § 750.520d. The Michigan Court of Appeals and the Michigan Supreme Court denied Carlyle's applications for leave to appeal. *People v. Carlyle*, 797 N.W.2d 160 (Mich. 2011) (mem.). In September 2015, Carlyle filed a motion for relief from judgment, which the trial court denied. The Michigan Court of Appeals and the Michigan Supreme Court denied Carlyle's applications for leave to appeal. *People v. Carlyle*, 904 N.W.2d 625 (Mich. 2017) (mem.). In January 2018, Carlyle filed a § 2254 petition and a motion for equitable tolling. The district court determined that the § 2254 petition was untimely and that Carlyle was not entitled to equitable tolling. Accordingly, the district court dismissed the § 2254 petition and declined to issue a certificate of appealability.

A certificate of appealability 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

when the district court has denied a § 2254 petition on procedural grounds, a petitioner must show “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 the instant case, reasonable jurists would not find it debatable whether the district court erred in determining that the § 2254 petition was untimely at the initial screening stage because Carlyle had an opportunity to present his position when he argued that he was entitled to equitable tolling because he is mentally disabled. *See Day v. McDonough*, 547 U.S. 198, 210 (2006).

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes a one-year statute of limitations for filing a federal habeas corpus petition. 28 U.S.C. § 2244(d)(1). Generally, a habeas petition must be filed within a year 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). Carlyle’s conviction became final on August 22, 2011, ninety days after the Michigan Supreme Court denied Carlyle’s application for leave to appeal on May 24, 2011. *See Bronaugh v. Ohio*, 235 F.3d 280, 283 (6th Cir. 2000). Therefore, under 28 U.S.C. § 2244(d)(1)(A), the statute of limitations began to run on August 23, 2011, and expired on August 23, 2012. Carlyle is not entitled to statutory tolling under § 2244(d)(2) because he did not file a petition for post-conviction relief until September 9, 2015, after the statute of limitations had run. *See Vroman v. Brigano*, 346 F.3d 598, 602 (6th Cir. 2003). Because the § 2254 petition was not filed prior to August 23, 2012, reasonable jurists could not disagree with the district court’s determination that the petition was time-barred under § 2244(d)(1).

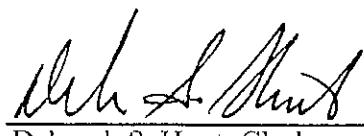
Section 2254’s statute of limitations may be equitably tolled when a petitioner shows “that he has been pursuing his rights diligently” and “that some extraordinary circumstance stood in his way and prevented timely filing.” *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 749 (6th Cir. 2011) (quoting *Holland v. Florida*, 560 U.S. 631, 649 (2010)). Carlyle argues that he is entitled to equitable tolling because he is mentally disabled and because he was taking powerful

medication at the time of his direct appeal. “[A] petitioner’s mental incompetence can constitute an extraordinary circumstance that tolls the limitations period, but the petitioner bears the burden to establish that ‘(1) he is mentally incompetent and (2) his mental incompetence caused his failure to comply with AEDPA’s statute of limitations.’” *Watkins v. Deangelo-Kipp*, 854 F.3d 846, 851 (6th Cir.), *cert. denied*, 138 S. Ct. 101 (2017) (quoting *Ata v. Scutt*, 662 F.3d 736, 742 (6th Cir. 2011)). Here, Carlyle cannot establish entitlement to equitable tolling because he has not provided sufficient evidence demonstrating that he was mentally incompetent and this was the cause of his failure to comply with the applicable statute of limitations. *See Watkins v. Deangelo-Kipp*, 854 F.3d 846, 852 (6th Cir. 2017) (holding that “mental illness is not the same as mental incompetence” and the petitioner must demonstrate “that any alleged incompetency *caused* his untimely filing”).

Even if Carlyle’s mental handicap constitutes extraordinary circumstances, Carlyle has failed to demonstrate that he pursued his rights diligently. While Carlyle eventually obtained legal assistance to help him with the filing and preparation of his collateral attack and his habeas petition, he has offered no explanation of why he did not seek such assistance during the limitations period. *See Spears v. Warden*, 605 F. App’x 900, 905 (11th Cir. 2015). Accordingly, reasonable jurists would not find it debatable whether the district court erred in determining that Carlyle was not entitled to equitable tolling.

Under these circumstances, reasonable jurists would not debate the district court’s determination that the § 2254 petition was untimely and that Carlyle was not entitled to equitable tolling. Accordingly, this court **DENIES** the application for a certificate of appealability.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WALLACE G. CARLYLE,

Petitioner,

v.

Case No. 18-10272

SHERMAN CAMPBELL,

Respondent.

JUDGMENT

In accordance with the court's "Opinion and Order Denying Petitioner's Motion for Equitable Tolling, Dismissing Petition for Writ of Habeas Corpus, and Denying Certificate of Appealability,"

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Respondent Sherman Campbell and against Petitioner Wallace G. Carlyle.

Dated at Port Huron, Michigan, this 1st day of May, 2018.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 1, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 1, 2018, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522

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WALLACE G. CARLYLE,

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v.

Case No. 18-10272

SHERMAN CAMPBELL,

Respondent.

**OPINION AND ORDER DENYING PETITIONER'S MOTION
FOR EQUITABLE TOLLING, DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS, AND DENYING CERTIFICATE OF APPEALABILITY**

Petitioner Wallace G. Carlyle has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. (Dkt. #1.) Petitioner, who is in the custody of the Michigan Department of Corrections, challenges his 2009 conviction for third-degree criminal sexual conduct in Berrien County Circuit Court. Also before the court is Petitioner's Motion for Equitable Tolling. (Dkt. #3.) Because it is apparent from its face that the petition is untimely, and that equitable tolling of the limitations period is not warranted, the court denies the motion and dismisses the petition.

I. BACKGROUND

Petitioner pleaded guilty in Berrien County Circuit Court to third-degree criminal sexual conduct, Mich. Comp. Laws § 750.520d. On November 3, 2009, he was sentenced as a second habitual offender to twelve to twenty-two and a half years imprisonment.

The Michigan Court of Appeals denied Petitioner's application for leave to appeal "for lack of merit in the ground presented." *People v. Carlyle*, No. 300382 (Mich. Ct. App. Nov. 5, 2000). The Michigan Supreme Court denied leave to appeal because it was "not persuaded that the question presented should be reviewed by [the] Court." *People v. Carlyle*, No. 142292, 489 Mich. 932 (Mich. May 24, 2011).

On September 9, 2015, Petitioner filed a motion for relief from judgment in the trial court. See Affidavit of Wallace G. Carlyle, Dkt. #3 Pg. ID 150. The trial court denied the motion on May 26, 2016. See *id.* The Michigan Court of Appeals denied Petitioner's application for leave to appeal, *People v. Carlyle*, No. 335809 (Mich. Ct. App. Jan. 27, 2017), as did the Michigan Supreme Court, *People v. Carlyle*, No. 155444, 501 Mich. 946 (Mich. Dec. 27, 2017).

On January 16, 2018, Petitioner then filed this habeas corpus petition. He also filed a motion for equitable tolling of the limitations period.

II. DISCUSSION

Title 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, applies to all habeas petitions filed after its effective date—April 24, 1996—and imposes a one-year limitations period for habeas petitions. See 28 U.S.C. § 2244(d)(1). A prisoner must file a federal habeas corpus petition within one year 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 . . . or the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." 28

U.S.C. § 2244(d)(1)(A), (D). The time during which a prisoner seeks state-court collateral review of a conviction does not count toward the limitation period. 28 U.S.C. § 2244(d)(2); *Ege v. Yukins*, 485 F.3d 364, 371–72 (6th Cir. 2007). A properly filed application for state post-conviction relief, while tolling the limitation period, does not reset the limitation period at zero. *Vroman v. Brigano*, 346 F.3d 598, 602 (6th Cir. 2003).

Petitioner concedes that, absent equitable tolling, his habeas petition is untimely. On May 24, 2011, the Michigan Supreme Court denied Petitioner’s leave to appeal the Michigan Court of Appeals’ decision affirming his conviction. *Carlyle*, 489 Mich. 932. Petitioner had ninety days from that date to file a petition for writ of certiorari with the United States Supreme Court, which he did not do. Thus, his conviction became final on August 22, 2011, when the time period for seeking certiorari expired. *Bronaugh v. Ohio*, 235 F.3d 280, 283 (6th Cir. 2000) (one-year statute of limitations does not begin to run until the time for filing a petition for a writ of certiorari for direct review in the United States Supreme Court has expired). The last day on which a petitioner can file a petition for a writ of certiorari in the United States Supreme Court is not counted toward the one-year limitations period applicable to habeas corpus petitions. *Id.* at 285. Accordingly, the limitations period commenced on August 23, 2011, and continued to run until it expired one year later on August 23, 2012.

Petitioner’s motion for relief from judgment did not toll the limitations period. The motion was filed on September 9, 2015, approximately three years after the limitations period already expired. *Vroman*, 346 F.3d at 602 (6th Cir. 2003) (holding that the filing of a motion for collateral review in state court serves to “pause” the clock, not restart it).

Petitioner, therefore, is correct that his petition is untimely unless the limitations period is equitably tolled.

The AEDPA's one-year limitations period is not a jurisdictional bar; it is therefore subject to equitable tolling where a habeas petitioner "shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 649 (2010) (internal quotation marks omitted). Petitioner argues that he is entitled to equitable tolling of the limitations period because he suffers from mental retardation, is mentally ill, and is on "some very powerful medication." See Affidavit of Wallace G. Carlyle, Dkt. #3 Pg. ID 150.

A petitioner's mental incompetence can constitute an extraordinary circumstance justifying equitable tolling of the one-year limitations period. *Ata v. Scutt*, 662 F.3d 736, 742 (6th Cir. 2011). But mild mental retardation, by itself, does not justify tolling of the limitations period. *Pinchon v. Myers*, 615 F.3d 631, 641–42 (6th Cir. 2010). Neither does mental illness alone justify equitable tolling, particularly where the evidence does not show mental illness occurring during the pertinent time period. *Stiltner*, 657 Fed. App'x at 521. To be entitled to equitable tolling for mental incompetence, the petitioner must show (1) that he was mentally incompetent, and (2) that his incompetence caused his late filing. *Id.* at 742. A mental impairment "might justify equitable tolling if it interferes with the ability to understand the need for assistance, the ability to secure it, or the ability to cooperate with or monitor assistance" once obtained. *Stiltner v. Hart*, 657 Fed.

App'x 513, 521 (6th Cir. 2016) (quoting *Bills v. Clark*, 628 F.3d 1092, 1100 (9th Cir. 2010)).

Petitioner fails to satisfy this standard. Petitioner states that he is mentally retarded, mentally ill, and was on powerful medications at the time of his direct appeal, causing him not to understand the one-year limitations period. In support of his argument, Petitioner attaches two customer assessments completed by clinicians at a community mental health center in September 2008, a list of his current medications (dated January 4, 2008), and a Michigan Department of Corrections Bureau of Health Care Services Treatment Plan (dated September 12, 2017). The documents and medical records attached to Petitioner's motion indicate that he is mildly mentally retarded. The records also show that in 2005 he suffered from depression and suicidal ideation following a breakup with his girlfriend. See Dkt. #1 Pg. ID 58. In 2008 he reported "some depressed feelings occasionally." *Id.* But these documents fail to address the relevant time period here: the one year period between August 23, 2011 and August 23, 2012. Nor do they show a causal connection between Petitioner's mental condition and his late filing.

In addition, a petitioner's ability to file other pleadings is relevant to whether there is a causal connection between a petitioner's mental condition and the ability to file a timely habeas petition. See *Bilbrey v. Douglas*, 124 Fed. App'x 971, 973 (6th Cir. 2005) (finding equitable tolling unavailable where, although petitioner had "continuing mental health problems," she continued to litigate in the state court); *Price v. Lewis*, 119 Fed. App'x 725, 726 (6th Cir. 2005) ("The exceptional circumstances that would justify

equitable tolling on the basis of mental incapacity are not present when the party who seeks the tolling has been able to pursue his or her legal claims during the period of his or her alleged mental incapacity." (quotation omitted)). Petitioner was able to file a motion for relief from judgment in the trial court in 2015, and he sought leave to appeal from the trial court's denial of this motion in 2016 and 2017. Even if Petitioner received assistance from the prison legal writer program when pursuing state-court collateral review, equitable tolling is not warranted. The Sixth Circuit has declined to equitably toll the limitations period when a petitioner who was claiming mental incompetence actively pursued claims in state court "by seeking and obtaining help completing legal paperwork." *Price v. Lewis*, 119 Fed. App'x 725, 726 (6th Cir. 2005).

The records do not support Petitioner's assertion that his low intelligence, mental illness, or the effects of medication were so severe that he was unable to pursue state court remedies or seek federal habeas relief in a timely manner. His petition is therefore untimely and will be dismissed.

III. CERTIFICATE OF APPEALABILITY

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability ("COA") is issued under 28 U.S.C. § 2253. 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). A petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citation omitted).

In this case, the court concludes that reasonable jurists would not debate the court's conclusion that the petition is untimely. Therefore, the court denies a certificate of appealability.

IV. CONCLUSION

For the reasons set forth above, the petition is untimely. Accordingly,

IT IS ORDERED that Petitioner's Motion for Equitable Tolling (Dkt. #3) is DENIED.

IT IS FURTHER ORDERED that the petition for a writ of habeas corpus (Dkt. #1) is DISMISSED, and a certificate of appealability is DENIED.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 1, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 1, 2018, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
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**Additional material
from this filing is
available in the
Clerk's Office.**