

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13739-K

HAROLD BLAKE,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Harold Blake is a Florida prisoner serving life in prison after a jury found him guilty of murder and attempted robbery with a firearm. The district court denied his 28 U.S.C. § 2254 petition as time-barred because it was filed over one year after he discovered the facts underlying his claims, and he failed to show that he was actually innocent. He now seeks a certificate of appealability (“COA”) and leave to proceed *in forma pauperis* (“IFP”) in this Court.

In order to obtain a COA, a petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the district court denied a habeas petition on procedural grounds, the petitioner must show that jurists of reason would find debatable (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether

the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Antiterrorism and Effective Death Penalty Act's ("AEDPA") imposes a one-year statute of limitations for filing a § 2254 federal habeas petition. 28 U.S.C. § 2244(d)(1). The limitations period is statutorily tolled during times in which a properly filed application for state post-conviction relief is pending. 28 U.S.C. § 2244(d)(2). A petitioner may bring an untimely federal habeas petition if he proves his actual innocence. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013); *Johnson v. Alabama*, 256 F.3d 1156, 1171 (11th Cir. 2001) (explaining that the petitioner must show his actual innocence, rather than his legal innocence, making the exception "exceedingly narrow in scope"). An actual-innocence claim will fail, however, unless the petitioner shows that, in light of new evidence, no reasonable juror would have found him guilty beyond a reasonable doubt. *McQuiggin*, 569 U.S. at 386.

Here, reasonable jurists would not debate the district court's determination that Blake's § 2254 petition was untimely. Blake learned about all of the facts underlying his claims by November 2009. Because the AEDPA limitations period begins to run on "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence," Blake would have had until November 2010—at the latest—to file his § 2254 petition. *See* 28 U.S.C. § 2244(d)(1)(D). In November 2009, however, a state post-conviction motion that Blake already had filed was still pending and remained pending until July 2010. After that, the limitations period ran for a year, and Blake had until July 2011, absent any further tolling, to file a § 2254 petition. Because he did not file any other tolling motions until April 6, 2012, after the AEDPA limitations period expired, his petition was untimely.

Blake argued that he was entitled to the actual innocence exception to the time-bar because two witnesses at his trial later recanted their testimonies during a state evidentiary hearing, and another person, Rosalind Mitchell, knew that the testimony of one of the witnesses was false. However, the state court that heard the witnesses' recantations found that they were not credible, and Mitchell admitted that she had merely been told that the testimony was untrue. Additionally, Blake failed to show that his codefendant's inculpatory testimony was false. As a result, he failed to show that no reasonable juror would have found him guilty beyond a reasonable doubt. *See McQuiggin*, 569 U.S. at 386. Accordingly, he did not qualify for the "exceedingly narrow" actual innocence exception. *Johnson*, 256 F.3d at 1171.

Because reasonable jurists would not debate the district court's dismissal of Blake's § 2254 petition as time-barred, his motion for a COA is DENIED. His IFP motion is DENIED AS MOOT.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE