UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7067

WILLIAM DAWSON,

Petitioner - Appellant,

v.

BRYAN K. WELLS,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (5:18-hc-02303-BO)

Submitted: October 15, 2019 Decided: October 18, 2019

Before GREGORY, Chief Judge, and THACKER and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

William Dawson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Dawson seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2012) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Dawson has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, deny Dawson's motion to liberally construe his in forma pauperis application and his motion for extension of time to file an application to proceed in forma pauperis, 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

PER CURIAM:

William Dawson seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2012) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Dawson has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, deny Dawson's motion to liberally construe his in forma pauperis application and his motion for extension of time to file an application to proceed in forma pauperis, 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

FILED: November 19, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7067
(5:18-hc-02303-BO)

WILLIAM DAWSON

Petitioner - Appellant

v.

BRYAN K. WELLS

Respondent - Appellee

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Chief Judge Gregory, Judge Thacker, and Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-hc-02303-BO

WILLIAM DAWSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**ORDER**
	)	
BRYAN K. WELLS,	)	
	)	
Respondent.	)	

On December 11, 2018, William Dawson ("petitioner"), a state inmate, filed pro se a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. See Pet. [D.E. 1]. On January 2, 2019, petitioner filed a "supplement brief," see [D.E. 4], that the court classifies as a motion to amend. See United States v. Winestock, 340 F.3d 200, 203 (4th Cir. 2003) (courts "classify pro se pleadings from prisoners according to their contents, without regard to their captions."). The court summarily grants petitioner's motion to amend. See Fed. R. Civ. P. 15(a)(1).[1] Pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the court now conducts its preliminary review and, for the reasons discussed below, dismisses the petition.

Discussion:

Petitioner is serving a life sentence without parole pursuant to his conviction for first-degree Murder in Craven County on February 17, 1999. See N.C. Dep't Pub. Safety, Offender Pub. Info. https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=0644308&searchOffenderId=0644308&listurl=pagelistoffendersearchresults&listpage=1 (last visited July 12, 2019).

[1] The court also notes that, on January 15, 2019, petitioner filed a petition for a writ of mandamus in the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit"). See [D.E. 5]. The Fourth Circuit denied the petition. In re: William Dawson, No. 19-1064 (4th Cir. May 28, 2019) (unpublished) (per curiam). A petition for a rehearing remains pending in that action. See id., Mot. [D.E. 9].

Petitioner appealed. See Pet. [D.E. 1] at 2. On June 6, 2000, the North Carolina Court of Appeals issued an unpublished table opinion finding no prejudicial error. See State v. Dawson, 138 N.C.App. 327, 535 S.E.2d 628 (2000).[2] Petitioner indicates he neither petitioned for a writ of certiorari in the United States Supreme Court nor filed any post-conviction relief in state court. Pet. [D.E. 1] at 3–5.

Petitioner contends he is "actually innocent" of first-degree murder. See id. at 5, 13. Petitioner states that the victim started a fistfight by "hitting petitioner beside his head [sic]." Petitioner alleges the victim then "ran outside of [the] house to get a weapon so [petitioner] got [a] pistol from his truck. As [the] victim approached petitioner, armed with [a] shovel, [petitioner] fired (1) shot in [the victim's] chest area [sic]. Id. Petitioner is "claiming actual innocence of first degree murder because he was simply defending himself from victim armed with shovel [sic]." Id. at 13.

In his motion, petitioner argues that, "on the day he shot at the victim[,] he was experiencing uncontrollable rage [sic]." Mot. [D.E. 4] at 1. Petitioner asks the court to "keep in mind he was acting out of anger and was just firing shots and didn't mean for anyone to be killed." Id. at 2. Petitioner doubts whether his bullet stuck the victim, and he posits that, by "running toward the woods" after being shot, the victim "contributed to his [own] death." Id. Petitioner also states he "was saddened" to learn the victim died and "offers a sincere apology to [the] victim's family." Id.

The court may sua sponte dismiss a section 2254 petition without notice if "it is indisputably clear from the materials presented to the district court that the petition is untimely and cannot be salvaged by equitable tolling principles or any of the circumstances enumerated in [section] 2244(d)(1)." Hill v. Braxton, 277 F.3d 701, 707 (4th Cir. 2002).

[2] Although petitioner indicates that his appeal to the North Carolina Supreme Court also was denied, see Pet. [D.E. 1] at 2, the court discerns no record of any such appeal or decision.

The Antiterrorism and Effective Death Penalty Act ("AEDPA") requires an individual in custody pursuant to the judgment of a state court to file any application for a writ of habeas corpus within one year of the latest of:

> (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.

28 U.S.C. § 2244(d)(1) (effective April 24, 1996).

Here, judgment in petitioner's case became final either: 1) ninety days after the North Carolina Supreme Court denied discretionary review and petitioner did not file a petition for a writ of certiorari in the United States Supreme Court; or 2) thirty-five days after the North Carolina Court of Appeals affirmed petitioner's conviction and petitioner failed to seek discretionary review in the North Carolina Supreme Court. See Supreme Court Rule 13; Gonzalez v. Thaler, 565 U.S. 134, 150 (2012) ("the judgment becomes final at the 'expiration of the time for seeking such review'—when the time for pursuing direct review in this Court, or in state court, expires."); N.C. R. App. P. 14(a) (notice of appeal as of right must be filed within fifteen days after Court of Appeals mandate); N.C. R. App. P. 15(b) (petition for discretionary review must be filed within fifteen days after Court of Appeals mandate); N.C. R. App. P. 32(b) (providing that, unless a court orders otherwise, a mandate issues twenty days after an opinion is filed). The AEDPA one-year limitation period then ran

uninterrupted for 365 days until it expired. See Minter v. Beck, 230 F.3d 663, 665 (4th Cir. 2000). Petitioner also does not allege: State action impeded the filing an earlier habeas petition; the recognition of a new constitutional right; or a factual predicate for his claim that could not have been earlier discovered. Cf. 28 U.S.C. § 2244(d)(1). Thus, absent a finding of equitable tolling, the petition is plainly untimely.

AEDPA's one-year limitation period is subject to equitable tolling, but only if a 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) (quotation omitted). A court may allow equitable tolling under section 2244 "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." Green v. Johnson, 515 F.3d 290, 304 (4th Cir. 2008) (quotation omitted).

Here, because petitioner has not plausibly alleged diligent pursuit of his rights or extraordinary circumstance that prevented him from timely filing his petition, equitable tolling does not apply. Instead, petitioner contends that his untimely 2254 petition should be excused pursuant to the "actual innocence" exception. See Pet. [D.E. 1] at 5, 13.

"[A]ctual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, . . . or, as in this case, expiration of the statute of limitations." McQuiggin v. Perkins, 569 U.S. 383, 386 (2013). However, "tenable actual-innocence gateway pleas are rare: '[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.'" Id. (quoting Schlup v. Delo, 513 U.S. 298, 329

(1995)). A petitioner is required to "support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." Schlup, 513 U.S. at 324. The court must evaluate the credibility of the new evidence, and the evidence must be examined in light of the entire record. See O'Dell v. Netherland, 95 F.3d 1214, 1250 (4th Cir. 1996) (en banc).

Succinctly stated, petitioner's filings fall well short of the "actual innocence" threshold requirements. Petitioner essentially argues that he is not guilty of first-degree murder because the victim fought with petitioner before petitioner shot him. See Pet. [D.E. 1] at 5. These bald claims fail to convince the court that no reasonable juror would have voted to find petitioner guilty beyond a reasonable doubt. Cf. Schlup, 513 U.S. at 329. Accordingly, the petition is dismissed as untimely.

Finally, after reviewing the habeas petition in light of the applicable standard, the court determines that reasonable jurists would not find the court's treatment of any of these claims debatable or wrong, and none of the issues are adequate to deserve encouragement to proceed further. Accordingly, the court will deny a Certificate of Appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Conclusion:

For the reasons discussed above, the court: GRANTS the motion to amend [D.E. 4]; DISMISSES the section 2254 habeas petition as time-barred pursuant to 28 U.S.C. § 2244(d)(1); DENIES a Certificate of Appealability; and DIRECTS the clerk to close the case.

SO ORDERED. This 16 day of July 2019.

Terrence Boyle

TERRENCE W. BOYLE
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

WILLIAM DAWSON,
Petitioner,
v.
BRYAN K. WELLS,
Respondent.

Judgment in a Civil Case

Civil Case Number: 5:18-HC-2303-BO

Decision by Court.

This case came before the Honorable Terrence W. Boyle, Chief United States District Judge, for preliminary review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

IT IS ORDERED AND ADJUDGED that the section 2254 habeas petition is dismissed as time-barred pursuant to 28 U.S.C. § 2244(d)(1). A Certificate of Appealability is denied.

This Judgment Filed and Entered on July 16, 2019, with service on:
William Dawson 0644308
Pender Correctional Institution
P.O. Box 1058
Burgaw, NC 28425
(via U.S. Mail)

July 16, 2019

/s/ Peter A. Moore, Jr.
Clerk of Court

By: _____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-hc-02303-BO

WILLIAM DAWSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**ORDER**
	)	
BRYAN K. WELLS,	)	
	)	
Respondent.	)	

On December 11, 2018, William Dawson ("petitioner"), a state inmate, filed pro se a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. See Pet. [D.E. 1]. On July 16, 2019, the court conducted its initial review, dismissed the petition as time-barred, and denied a certificate of appealability. See Order [D.E. 8]. Petitioner appealed. See [D.E. 10]. On July 31, 2019, petitioner moved for release from incarceration pending his appeal. See Mot. [D.E. 13]. On October 18, 2019, the United States Court of Appeals for the Fourth Circuit dismissed petitioner's appeal in an unpublished, per curiam opinion. See [D.E. 15]. On October 23, 2019, the court denied as moot petitioner motion seeking release pending his appeal. Order [D.E. 17].

On October 31, 2019, petitioner moved for reconsideration of the court's October 23, 2019, order pursuant to "pro se rule" 59(e). See Mot. [D.E. 20]. Petitioner requests that the court liberally construe his motion as a motion pursuant to Federal Rule of Criminal Procedure 35(b) and "reduce his life sentence without parole to a 10-year to 12-year sentence for second degree murder time served and cause his custodian . . . to release him without conditions."[1] Id. at 1. Petitioner argues

[1] Because petitioner was convicted and sentenced in North Carolina state court, and is serving a state sentence, petitioner's request for a "reduction of sentence" pursuant to Federal Rule of Criminal Procedure 35(b) necessarily fails.

APP- (A)

that the prosecutor and investigator in his case, "in a conspiracy of investigatory misconduct," investigated a location where the "fleeing murder victim collapsed and died as the crime scene, when the true crime scene was [the] location where [the] victim was shot." Id. at 1–2. As in his prior filings, petitioner also contends that the victim was menacing petitioner with a shovel, admits to shooting the victim in the chest and leaving the scene, and notes that the victim ran off into the woods before dying. Id. at 2–3. Petitioner argues that "no reasonable jury would have found petitioner guilty beyond a reasonable doubt, without [investigatory] misconduct conspiracy, because if true crime scene had been investigated, then shovel weapon, with victim's prints on handle, would have been included in trial [Brady violation] [sic]." Id. at 3.

The decision to alter or amend a judgment pursuant to Federal Rule of Civil Procedure 59(e) is within the sound discretion of the court. See Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 653 (4th Cir. 2002). This circuit recognizes three reasons for granting a Rule 59(e) motion to alter or amend a judgment: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available [previously]; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (quotations omitted).

Petitioner's motion for reconsideration merely seeks to re-litigate prior claims. Because petitioner does not cite to any change in controlling law, raise newly discovered evidence, identify any clear error in the court's previous orders, or show that the result was manifestly unjust, petitioner is not entitled to relief under Rule 59(e). See Zinkand, 478 F.3d at 637; see also Exxon Shipping Co. v. Baker, 554 U.S. 471, 486 n.5 (2008) ("Rule 59(e) permits a court to alter or amend a judgment, but it may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." (citation and quotation marks omitted)).

To the extent petitioner instead seeks relief under Federal Rule of Civil Procedure 60(b), this rule "authorizes a district court to grant relief from a final judgment for five enumerated reasons or for any other reason that justifies relief." Aikens v. Ingram, 652 F.3d 496, 500 (4th Cir. 2011) (en banc) (quotation omitted). Under Rule 60(b), a movant first must demonstrate that his motion is timely, that he has a meritorious claim or defense, that the opposing party will not suffer unfair prejudice from setting aside the judgment, and that exceptional circumstances warrant the relief. See Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 n.12 (4th Cir. 2010). If a movant satisfies these threshold conditions, he must then "satisfy one of the six enumerated grounds for relief under Rule 60(b)." Nat'l Credit Union Admin. Bd. v. Gray, 1 F.3d 262, 266 (4th Cir. 1993).

Here, because petitioner's motion for reconsideration fails to raise a "meritorious claim or defense," or otherwise demonstrate that "exceptional circumstances warrant the relief," petitioner fails to meet the threshold requirements under Rule 60(b). See Robinson, 599 F.3d at 412 n.12. Thus, after reviewing petitioner's motion for reconsideration under the governing standards, the court finds that petitioner fails to establish grounds for relief under either Rule 59(e) or Rule 60(b).

In sum, the court DENIES petitioner's motion for reconsideration [D.E. 20].

SO ORDERED. This 31 day of October 2019.

Terrence Boyle

TERRENCE W. BOYLE
Chief United States District Judge