

APPENDIX A

United States Court of Appeals for Seventh
Circuit

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

December 31, 2019

To: Thomas G. Bruton
UNITED STATES DISTRICT COURT
Northern District of Illinois
Chicago, IL 60604-0000

No. 19-1680	KENNETH DURANT, Petitioner - Appellant v. FRANK LAWRENCE, Respondent - Appellee
Originating Case Information:	
District Court No: 1:18-cv-04716 Northern District of Illinois, Eastern Division District Judge Robert M. Dow	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:

No record to be returned

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NOTE TO COUNSEL:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten (10) days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Office of the Director of the Bureau of the Census
Washington, D.C. 20543

Dear Sir:

Enclosed for you are two copies of the report of the

Director of the Bureau of the Census, dated and captioned as above.

Very truly yours,

John W. Dow, Jr.
Director

cc: Mr. [illegible]

The report of the Director of the Bureau of the Census, dated and captioned as above, is being furnished to you for your information and for your use in the performance of your duties.

Very truly yours,

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted December 3, 2019

Decided December 9, 2019

Before

MICHAEL S. KANNE, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 19-1680

KENNETH DURANT,
Petitioner-Appellant,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 18-cv-4716

FRANK LAWRENCE,
Respondent-Appellee.

Robert M. Dow, Jr.,
Judge.

ORDER

Kenneth Durant has filed a notice of appeal from the dismissal as untimely of his petition under 28 U.S.C. § 2254, which we construe as an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is **DENIED**.

APPENDIX B
Northern District of Illinois
Eastern Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS**

Kenneth Durant (B05739),

Plaintiff(s),

v.

Jacqueline Lashbrook ,

Defendant(s).

Case No. 18-cv-4716

Judge Dow

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of \$,

which ☐ includes pre-judgment interest.
☐ does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Jacqueline Lashbrook
and against plaintiff(s) Kenneth Durant (B05739).

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was (*check one*):

- ☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Robert M. Dow on a motion to dismiss by Respondent which is granted. Court declines to issue a certificate of appealability.

Date: 3/19/2019

Thomas G. Bruton, Clerk of Court

Carolyn Hoesly, Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KENNETH DURANT (B05739),

Petitioner,

v.

JACQUELINE LASHBROOK et al.,

Respondents.

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Case No. 18-cv-4716

Judge Robert M. Dow, Jr.

ORDER

This matter is before the Court on Respondents' motion [9] to dismiss Petitioner's habeas petition. For the reasons explained below, Respondents' motion [9] is granted, Petitioner's habeas petition [1] is dismissed, and the Court declines to issue a certificate of appealability. Civil case terminated.

STATEMENT

Petitioner Kenneth Durant, a prisoner incarcerated at the Menard Correctional Center, has brought this *pro se* habeas corpus action pursuant to 28 U.S.C. § 2254 challenging his 2005 aggravated vehicular hijacking and armed robbery convictions from the Circuit Court of Cook County. Currently before the Court is Respondents' motion to dismiss Petitioner's habeas petition [9] as untimely because it was not filed with the time period required by 28 U.S.C. § 2244(d)(1)(A).

Section 2244(d)(1)(A) provides that "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court," with "[t]he limitations period [to] run from the latest of" four events—here, "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). Petitioner's conviction became final by the conclusion of direct review when the Supreme Court of the United States denied certiorari on March 23, 2009. See *Durant v. Illinois*, 556 U.S. 1137 (2009) (Mem.).

The one-year limitations period ran for 195 days, from March 23, 2009 until October 5, 2009, the date on which Petitioner filed a state postconviction petition. See *People v. Durant*, 2017 IL App (1st) 143031-U, ¶ 10 (Ill. App. 2017). Pursuant to 28 U.S.C. § 2244(d)(2), the one-year limitations period was tolled while Petitioner's state postconviction petition was pending in the state courts. The Illinois trial court dismissed the petition, *Durant*, 2017 IL App (1st Dist.) 143031-U, ¶ 18, the Illinois appellate court affirmed, *id.* ¶ 30, and the Illinois Supreme Court denied leave to appeal on September 27, 2017, *People v. Durant*, 89 N.E.3d 758 (Ill. 2017) (Table).

The one-year limitations period expired 170 days later, on March 16, 2018. Petitioner did not file his section 2254 habeas petition until July 9, 2018—nearly four months late.

The Court notes that after the Illinois Supreme Court denied his postconviction petition, Petitioner filed a petition for writ of certiorari in the Supreme Court of the United States, which was denied on February 20, 2018. See *Durant v. Illinois*, 138 S. Ct. 1015 (2018) (Mem.). However, this date is not relevant to the statute of limitations analysis because the one-year limitations period set forth in section 2244(d)(1)(A) is “not tolled by certiorari petitions” for review of state court denials of postconviction relief. *Lawrence v. Florida*, 549 U.S. 327, 336 (2007); see also *Socha v. Boughton*, 763 F.3d 674, 678 (7th Cir. 2014) (tolling pursuant to § 2244(d)(2) lasts “only for the period when the state courts are considering the case; it does not include the time during which certiorari may be sought in the U.S. Supreme Court (or, if sought, ruled upon)”).

Petitioner does not dispute that he filed his petition after the one-year statute of limitations had expired. He asserts, however, that the Court should equitably toll the statute of limitations on the basis that he is not a lawyer and the prison library staff on whose advice he relied incorrectly calculated the date that his petition was due.

Documents attached to Petitioner’s response brief indicate that he did not contact library staff until after the United States Supreme Court denied certiorari on his postconviction petition on February 20, 2018, and did not speak with library staff until June 16, 2018. See [12] at 6. At that point, the one-year statute of limitations period had already expired, and therefore Petitioner cannot blame his failure to timely file his petition on any misinformation allegedly provided to him by library staff.


Even if Petitioner had missed the filing deadline based on reliance on library staff’s advice, this would not be sufficient to justify application of equitable tolling. “To qualify for equitable tolling, a petitioner must show: (1) that he has been pursuing his rights diligently; and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Lombardo v. United States*, 860 F.3d 547, 551 (7th Cir. 2017). “‘Extraordinary circumstances’ are present only when an ‘external obstacle’ beyond the party’s control ‘stood in [his] way’ and caused the delay.” *Id.* at 552 (quoting *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 756 (U.S. 2016)). “In other words, the circumstances that caused a party’s delay must be ‘both extraordinary and beyond [his] control.’” *Id.* A mistake in calculating a due date, whether done by the petitioner himself, the petitioner’s attorney, or a lay person, is not itself an “extraordinary circumstance” to which equitable tolling applies. See *Lombardo*, *Id.* at 552-53; see also *Lawrence*, 549 U.S. at 336-37; *Taylor v. Michael*, 724 F.3d 806, 812 (7th Cir. 2013). Nor is Petitioner’s “[l]ack of familiarity with the law” “a circumstance that justifies equitable tolling.” *Taylor*, 724 F.3d at 811; see also *Janssen v. Pugh*, 394 Fed. Appx. 305, 306, (7th Cir. 2010); *Gonzalez v. Atchinson*, 2015 WL 1502240, at *3 (N.D. Ill. Mar. 26, 2015). In short, Petitioner identifies no specific facts suggesting that he diligently pursued his habeas petition but ultimately filed it late due to compelling, extraordinary circumstances. His petition is therefore time barred.

The Court declines to issue a certificate of appealability under Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, because it does not believe 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 [this Court] was correct in its procedural ruling” on statute of limitations grounds. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner is advised that this is a final decision ending his case in this Court. If Petitioner wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. See Fed. R. App. P. 4(a)(1). Petitioner need not bring a motion to reconsider this Court’s ruling to preserve his appellate rights. However, if Petitioner wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. See Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. See Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. See Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. See Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. See Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. See Fed. R. App. P. 4(a)(4)(A)(vi).

Dated: March 19, 2019


Robert M. Dow, Jr.
United States District Judge

APPENDIX C

Dead line for Fed Habe from Library Clerk

DURANT	B05739	NU823	FED HABE	3/16/2018	6/16/2018
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**Additional material
from this filing is
available in the
Clerk's Office.**