

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

SEP 16 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL R. HAYNES,

Petitioner-Appellant,

v.

COLETTE S. PETERS, Director,  
Department of Corrections, Board Member  
of Oregon, Board of Parole and Post-  
Supervision; JERI TAYLOR,  
Superintendent, Eastern Oregon Correctional  
Institution,

Respondents-Appellees.

No. 19-35314

D.C. No. 2:18-cv-00331-MO  
District of Oregon,  
Pendleton

ORDER

Before: M. SMITH and HURWITZ, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 8) is denied. *See*

9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

APPENDIX A

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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Institution,

Respondents-Appellees.

No. 19-35314

D.C. No. 2:18-cv-00331-MO  
District of Oregon,  
Pendleton

ORDER

Before: IKUTA and N.R. SMITH, Circuit Judges.

The request for a certificate of appealability (Docket Entry Nos. 3, 4, and 6) is denied because appellant has not shown 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); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

**DENIED.**

APPENDIX A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MICHAEL ROBERT HAYNES,

Case No. 2:18-cv-00331-MO

Petitioner,

JUDGMENT

v.

COLETTE PETERS, et al.,

Respondents.

MOSMAN, District Judge.

Based on the Record,

IT IS ORDERED AND ADJUDGED that this Action is DISMISSED, with prejudice. The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). Pending motions, if any, are DENIED AS MOOT.

DATED this 15 day of March, 2019.



Michael W. Mosman  
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MICHAEL ROBERT HAYNES,  
Petitioner,

Case No. 2:18-cv-00331-MO

OPINION AND ORDER

v.

COLETTE PETERS, et al.,  
Respondents.

Michael Robert Haynes  
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MOSMAN, District Judge.

Petitioner brings this habeas corpus case pursuant to 28 U.S.C. § 2254 challenging the legality of a 2015 decision by the Oregon Board of Post-prison Supervision ("Board"). For the reasons that follow, the Petition for Writ of Habeas Corpus (#1) is dismissed because it is untimely.

BACKGROUND

Petitioner is serving a life sentence with a 30-year minimum term following his 1986 guilty plea to one count of Aggravated Murder in Washington County. On April 8, 2015, the Board conducted a murder review hearing pursuant to ORS 163.105 and concluded that Petitioner was not likely to be rehabilitated within a reasonable time, and that he could not petition for another murder review hearing until April of 2025. Petitioner timely for administrative review, which the Board denied on April 27, 2016. Respondent's Exhibit 111, p. 17.

The Board mailed its denial of administrative review on May 4, 2016. *Id.* Pursuant to ORS 144.335, Petitioner had 60 days from the mailing date in which to file for judicial review, but he failed to meet this deadline. As a result, the Oregon Court of Appeals dismissed Petitioner's appeal on procedural grounds. Respondent's Exhibit 112, p. 1. The Oregon Court of Appeals denied Petitioner's subsequent motion for reconsideration, and the Oregon Supreme Court found that it lacked jurisdiction because Petitioner had not timely sought judicial review. Respondent's Exhibit 118. The Oregon Supreme Court denied a

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subsequent motion for reconsideration, and the U.S. Supreme Court denied certiorari. Respondent's Exhibits 125, 126.

In the meantime (and before the mailing of the Board's administrative review denial), Petitioner filed a state habeas corpus action in April 2016 challenging the Board's decision. The Marion County Circuit Court concluded that a state habeas corpus action was not a proper vehicle by which to challenge the Board's decision and, even assuming it was, the challenge lacked merit.<sup>1</sup> Respondent's Exhibits 104, 105. The Oregon Court of Appeals affirmed that decision without issuing a written opinion, and the Oregon Supreme Court denied review. Respondent's Exhibits 108 (ER-1), 109.

Petitioner filed this federal habeas corpus action on February 15, 2018 challenging the Board's April 8, 2015 decision.<sup>2</sup> Respondent asks the Court to deny relief on the Petition because: (1) Petitioner failed to timely file this case; (2) all of Petitioner's claims are procedurally defaulted; and (3) to the extent Petitioner seeks to challenge the denial of his state habeas corpus action, that action was not properly filed in state court and, therefore, is not properly at issue in this federal habeas proceeding.

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<sup>1</sup> In Oregon, state habeas relief is unavailable to challenge a parole decision if the inmate is eligible to seek judicial review of the Board's decision. ORS 34.330.

<sup>2</sup> Although the Petition was actually filed with the Court on February 20, 2018, pursuant to the "prison mailbox rule," a prisoner's documents are deemed filed at the moment the prisoner delivers them to prison authorities for forwarding to the clerk of the court. *Saffold v. Newland*, 224 F.3d 1087, 1091 (9th Cir. 2000).