UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6338

JESSE WILLIAMS,

Petitioner - Appellant,

v.

WELLS,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:19-cv-00244-CCE-JLW)

Submitted: May 21, 2020 Decided: May 27, 2020

Before AGEE and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jesse Williams, Appellant Pro Se.

PER CURIAM:

Jesse Williams seeks to appeal the district court's orders dismissing as untimely his 28 U.S.C. § 2254 (2018) petition and denying his Fed. R. Civ. P. 59(e) motion. With regard to the dismissal order, the district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2018). The magistrate judge recommended that relief be denied and advised Williams that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017); *Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). Williams has waived appellate review of the district court's order dismissing his § 2254 petition as untimely by failing to file objections to the magistrate judge's recommendation after receiving proper notice. As to the Rule 59(e) motion, we conclude that Williams has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2018).

Accordingly, we deny a certificate of appealability, deny leave 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

law library. Given the complexity of the AEDPA and the ease with which uninformed post-conviction motions and petitions in state court can result in procedural bars,[1] this is not a facially frivolous argument, assuming its factual underpinnings are correct. *See generally* Barbara J. Van Arsdale, *Inadequate Access to Legal Materials as Grounds for Equitable Tolling of One-Year Limitations Period Established in Antiterrorism and Effective Death Penalty Act for Writ of Habeas Corpus Sought by Person in Custody Pursuant to Judgment of State Court (28 U.S.C.A. § 2244(d)(1))*, 18 A.L.R. Fed. 2d 717 (2007) (summarizing pre-*Holland* cases); *Bryant v. Hines*, No. 5:12-HC-2061-F, 2013 WL 427101, at *5 (E.D.N.C. Feb. 4, 2013) (noting that "a lack of access to legal materials may, in certain extraordinary circumstances, warrant equitable tolling.").

Here, however, the assertion in Mr. Williams' motion is conclusory and is not made under penalty of perjury. He does not state that he diligently sought legal materials or access to a law library or describe his efforts to do so. *Cf. Holland v. Florida*, 560 U.S. 631, 649 (2010) (stating that equitable tolling is warranted 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" (internal quotation marks omitted)); *see also Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir. 2003) (en banc). He does not explain how his lack of access to legal materials impeded his timely filing, and

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[1] *See* Bryan A. Stevenson, *Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases*, 41 Harv. C.R.-C.L. L. Rev. 339, 349-51 (2006) (discussing the ease with which complex state procedural requirements can bar later review in federal court).

unfamiliarity with the legal process does not constitute grounds for equitable tolling. *See United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004); *Harris v. Hutchinson*, 209 F.3d 325, 330-31 (4th Cir. 2000). The notice mailed to the petitioner with the Magistrate Judge's recommendation explained his right to object to that recommendation, Doc. 15, so he did not need a law library to understand that this right existed; his failure to file any sort of objection is further indication of a lack of diligence. On this record, this is simply a "garden variety" claim for tolling based on excusable neglect, which should be denied. *See Holland*, 560 U.S. at 651-52.

This does not mean that every petitioner's argument for equitable tolling should be rejected without close examination, for "[i]t must never be forgotten that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired." *Bowen v. Johnston*, 306 U.S. 19, 26 (1939); *accord Slack v. McDaniel*, 529 U.S. 473, 483 (2000) (holding that the "writ of habeas corpus plays a vital role in protecting constitutional rights"). As the Supreme Court affirmed in *Holland*, there is a strong historical basis for application of equitable principles in habeas cases, and a "strong equitable claim" will keep the courthouse doors open to state prisoners. *See Holland*, 560 U.S. at 649. Here, however, Mr. Williams' conclusory assertion is insufficient to support his motion to reconsider.

It is **ORDERED** that the motion to reconsider, Doc. 17, is **DENIED**.

This the 20th day of February, 2020.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JESSE WILLIAMS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**1:19CV244**
	)	
WELLS,	)	
	)	
Respondent.	)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket Entry 1.) Respondent has filed a motion for summary judgment (Docket Entry 5), a brief (Docket Entry 7), and an answer (Docket Entry 4). Petitioner, in turn, filed a response (Docket Entry 10), a brief in support (Docket Entry 11), a motion for the appointment of counsel (Docket Entry 12), and a notice (Docket Entry 13). This matter is now ready for a ruling.

Background

In 2015, Petitioner was convicted in Guilford County Superior Court of attempted first degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, and breaking and entering, and was sentenced to 245 to 306 months of imprisonment. (Docket Entry 7, Ex. A at 63-65, 68.) In January of 2017, the North Carolina Court of Appeals rejected Petitioner's contention that the trial court had coerced a verdict, but vacated the felony breaking and entering judgment, and remanded for resentencing. (*Id.*, Ex. C.) Petitioner was resentenced to 242 to 303 months of imprisonment. (*Id.*, Ex. G.) Meanwhile, Petitioner filed

a petition for discretionary review in the North Carolina Supreme Court in February of 2017, seeking review of the state court of appeals' rejection of his coercion argument. (*Id.*, Ex. H.) The petition for discretionary review was denied on May 3, 2017. (*Id.*, Ex. J.)

On July 24, 2018, Petitioner sent a letter, along with a motion for appropriate relief ("MAR"), to the Clerk of the Guilford County Superior Court. (*Id.*, Exs. K and L.) In his letter, Petitioner explained that he enclosed his "MAR to be filed, due to the inavailability [sic] of a notary until later . . . ." (*Id.*, Ex. K.) Petitioner explained that he was not filing an affidavit in support of his MAR or an "Affidavit *in Forma Pauperis*," but would file those the following week. (*Id.*) On August 6, 2018, Petitioner filed his application to proceed *in forma pauperis*, an affidavit in support of his MAR, and an amendment to his MAR. (*Id.*, Exs. M, N, O, P.) The clerk filed stamped these documents on August 9, 2018. (*Id.*) On November 6, 2018, Petitioner's MAR, which the state post-conviction court found to be "filed on August 9, 2018," was denied. (*Id.*, Ex. Q.) On December 31, 2018, Petitioner filed a petition for a writ of certiorari with the North Carolina Court of Appeals to review the denial of his MAR. (*Id.*, Ex. R.) It was denied on January 31, 2019. (*Id.*, Ex. S.) Petitioner executed his § 2254 petition on February 13, 2019 and he filed it in this Court on February 27, 2019. (Docket Entry 1.)

Petitioner's Grounds

Petitioner raises four grounds for relief. Specifically, he contends: (1) the trial court denied him access to the psychiatric files of the state's key witness in violation of his Sixth Amendment confrontation rights; (2) the trial court used an improper jury instruction in violation of his due process rights; (3) he was wrongfully convicted of both attempted first degree murder and assault with a deadly weapon with intent to kill inflicting serious injury of

the same victim; and (4) counsel was ineffective in violation of his Sixth Amendment rights. (Docket Entry 1, § 12, Grounds One through Four.)

Discussion

Respondent requests dismissal claiming the § 2254 petition was filed beyond the one-year limitation period imposed by 28 U.S.C. § 2244(d)(1). (Docket Entry 7 at 8-20.) In order to assess this argument, the Court first must determine when Petitioner's one-year period to file his § 2254 petition commenced. In this regard, the United States Court of Appeals for the Fourth Circuit has explained that:

> Under § 2244(d)(1)(A)-(D), the one-year limitation period *begins to run from* the latest of several potential starting dates:
>
> (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.

Green v. Johnson, 515 F.3d 290, 303-04 (4th Cir. 2008) (emphasis added). Petitioner has not invoked Subparagraphs (B) through (D) of § 2244(d)(1) and the record does not reveal any meaningful basis for addressing them.

Under Subparagraph (A), Petitioner's one-year limitation period began on "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). The Court must therefore ascertain when direct review (or the time for seeking direct review) of Petitioner's underlying conviction(s) ended. Here, Petitioner's convictions became final on August 1, 2017, 90 days after the May 3, 2017 decision of the Supreme Court of North Carolina denying Petitioner's petition for discretionary review. (Docket Entry 7, Ex. J.) *See Clay v. United States*, 537 U.S. 522, 527 (2003) (holding that "[f]inality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires." (internal citations omitted)); *see also* Sup. Ct. R. 13.1 (allowing petitioners 90 days after highest state appellate court's denial to file for writ of certiorari).

Petitioner's one-year period of limitation under 28 U.S.C. § 2244(d)(1) thus commenced on August 1, 2017 and then ran for 357 days until July 24, 2018 (the earliest date on which the MAR could have been filed). (Docket Entry 7, Ex. L.) The limitations period was then presumably[1] statutorily tolled[2] until January 31, 2019 (the day the state court of appeals denied the petition for writ of certiorari) (*Id.*, Ex. S) and then expired eight days later

[1] Respondent makes a strong argument that Petitioner's MAR was not properly filed under state law until after the expiration of the one-year deadline and that, therefore, Petitioner is entitled to no statutory tolling whatsoever. (Docket Entry 7 at 9-15.) If Respondent is correct, Petitioner's § 2254 petition would be more than six months late, rather than approximately one week late. (*Id.* at 15-17.) In either event, the instant § 2254 petition is late and it is time-barred. Given that the result is the same under either assessment, the Court declines to definitively resolve the issue.

[2] *See* 28 U.S.C. § 2244(d)(2); *see Taylor v. Lee*, 186 F.3d 557, 561 (4th Cir. 1999) (state collateral filings generally toll the federal habeas deadline for "the entire period of state post-conviction proceedings, from initial filing to final disposition by the highest court (whether decision on the merits, denial of certiorari, or expiration of the period of time to seek further appellate review)").

on February 8, 2019, nearly a week before Petitioner executed and mailed his § 2254 petition on February 13, 2019, and nearly three weeks before it was file-stamped in this Court on February 27, 2019 (Docket Entry 1). Therefore, Petitioner's claims are time-barred.

Petitioner's arguments to the contrary are not persuasive. First, he argues that he is entitled to equitable tolling. (Docket Entry 10 at 3.) Equitable tolling may apply to extend the federal habeas deadline when 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." *See Holland v. Florida*, 560 U.S. 631, 648 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). Petitioner asserts that he is entitled to equitable tolling because he lacked access to a law library or a paralegal to assist him in preparing his § 2254 petition and so he was denied access to the courts. (Docket Entry 10 at 3; Docket Entry 11 at 2-3.) He asserts elsewhere that he has no legal experience. (Docket Entry 11 at 2.)

But ignorance of the law is not a basis for equitable tolling. *United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004). Moreover, the state is not constitutionally required to provide prison libraries or paralegals, but satisfies its obligations through North Carolina Prison Legal Services. *See, e.g.*, *Holman v. Perry*, No. 1:15CV569, 2015 WL 12914356, at *6 (M.D.N.C. Dec. 14, 2015); *Coley v. Hall*, No. 1:13CV484, 2013 WL 12091638, at *3 (M.D.N.C. Oct. 29, 2013); *Burgess v. Herron*, No. 1:11CV420, 2011 WL 5289769, at *2 (M.D.N.C. Nov. 2, 2011).[3] Nor do the potential merits of a claim impact the timeliness analysis, so any argument along these lines

[3] Any effort to recast these arguments as an effort to satisfy Subparagraph (B) would also fail. *See Goldman v. Keller*, No. 1:11CV258, 2012 WL 2904577, at *3 (M.D.N.C. July 16, 2012).

must also fail. *See Rouse v. Lee*, 339 F.3d 238, 251–52 (4th Cir. 2003). Equitable tolling is not warranted here.

Second, Petitioner asserts that he is entitled to a later starting date of the limitations period because he is actually innocent of the crimes of which he was convicted. (Docket Entry 10 at 5-6.) The Supreme Court recognized in *McQuiggin v. Perkins*, 133 S.Ct. 1924, 1928 (2013), an actual innocence exception to the relevant time limitation. However, to establish actual innocence, "a petitioner must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *Schlup v. Delo*, 513 U.S. 298, 327 (1995); *see McQuiggin*, 133 S.Ct. at 1935. "To be credible, such a claim requires petitioner 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.

Here, Petitioner has done no more than assert in a conclusory manner that he is innocent, which is insufficient to satisfy this exception. *See Nickerson v. Lee*, 971 F.2d 1125, 1136 (4th Cir. 1992) *abrog'n on other grounds recog'd, Yeatts v. Angelone*, 166 F.3d 255 (4th Cir. 1999). Petitioner has not proffered any new evidence regarding his case, let alone evidence that would demonstrate that no reasonable juror could vote to find him guilty beyond a reasonable doubt. For all these reasons, the instant § 2254 petition is time-barred.

Motion for the Appoint of Counsel

Petitioner has filed a motion for the appointment of counsel. (Docket Entry 12.) However, he has not shown good cause for any such appointment, and none is apparent, given that this § 2254 petition is time-barred. This motion will be denied.

CONCLUSION

Petitioner's grounds are time-barred. Neither a hearing, nor discovery, nor the appointment of counsel are warranted.

IT IS THEREFORE ORDERED that Petitioner's motion for the appointment of counsel (Docket Entry 12) be **DENIED**.

IT IS THEREFORE RECOMMENDED that Respondent's motion for summary judgment (Docket Entry 5) be **GRANTED**, that the § 2254 petition (Docket Entry 1) be **DISMISSED**, and that Judgment be entered dismissing this action.

Joe L. Webster
United States Magistrate Judge

November 7, 2019

FILED: July 6, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6338
(1:19-cv-00244-CCE-JLW)

JESSE WILLIAMS

Petitioner - Appellant

v.

WELLS

Respondent - Appellee

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Agee, Judge Quattlebaum, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

APP-B

FILED: June 3, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6338
(1:19-cv-00244-CCE-JLW)

JESSE WILLIAMS

Petitioner - Appellant

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STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

APP. - D