

APPENDICES

APPENDIX A

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 23, 2020
Decided August 6, 2020

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-3288

KENNETH CURRY,
Petitioner-Appellant,

Appeal from the United States District
Court for the Central District of Illinois.

v.

KESS ROBERSON,
Respondent-Appellee.

No. 3:19-CV-03244-CSB

Colin S. Bruce,
Judge.

ORDER

Kenneth Curry has filed a notice of appeal from the dismissal as untimely of his petition under 28 U.S.C. § 2254, and an application for a certificate of appealability. Having 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. Curry's motion to proceed in forma pauperis also is denied.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

KENNETH CURRY,

)

Petitioner,

)

v.

)

Case No. 19-cv-3244

KESS ROBERSON,

)

Respondent.

)

ORDER

On October 16, 2019, Petitioner filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (#1). Petitioner has also filed a Motion to Proceed in Forma Pauperis (#3). For the following reasons, the Petition is DISMISSED, and this case is terminated.

BACKGROUND

On February 20, 2003, Petitioner shot William Workman with a 12-gauge shotgun and stole his wallet. Petitioner was charged with attempted first degree murder, aggravated battery with a firearm, armed robbery, aggravated battery, and aggravated unlawful restraint. On September 13, 2004, Petitioner pled guilty to attempted first degree murder and armed robbery in exchange for dismissal of the remaining charges and a sentence of 20 years' imprisonment and three years of

ANALYSIS

1. *Motion to Proceed in Forma Pauperis*

Based on Petitioner's motion and supporting documents, the court finds

Petitioner is unable to pay the filing fee. His Motion to Proceed in Forma Pauperis (#3) is GRANTED.

2. *Habeas Petition*

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition” Here, because it plainly appears that Petitioner is not entitled to relief, his Petition is dismissed.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) established a one-year limitations period for state prisoners to file for federal habeas relief under § 2254, which “run[s] from the latest of” four specified dates. *Gonzalez v. Thaler*, 565 U.S. 134, 148 (2012). According to 28 U.S.C. § 2244(d):

(1) 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. The limitation period shall run from 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;

CERTIFICATE OF APPEALABILITY

In *Slack v. McDaniel*, the United States Supreme Court held that "when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, 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). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.*

Here, the claim raised in the Petition is untimely by over a decade. The facts before this court would not allow any reasonable jurist to conclude that the court has erred in denying the petition. Therefore, a Certificate of Appealability is DENIED.

IT IS THEREFORE ORDERED THAT:

- (1) Petitioner's Motion to Proceed in Forma Pauperis (#3) is GRANTED.
- (2) Petitioner's Petition (#1) is DISMISSED.
- (3) A Certificate of Appealability is DENIED.
- (4) This case is terminated.

ENTERED this 31st day of October, 2019.

s/ Colin Stirling Bruce
COLIN S. BRUCE
U.S. DISTRICT JUDGE

APPENDIX C



SUPREME COURT OF ILLINOIS

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CAROLYN TAFT GROSBOLL
Clerk of the Court
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September 24, 2019

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THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

M.D.014374 - Curry v. Roberson

The motion by petitioner for leave to file a petition for writ of habeas corpus is denied.

Very truly yours,

Carolyn Taft Gosboll

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division