APPENDIX A

Order of the United States Court of Appeals for the Seventh Circuit Denying Petitioner's request for a Certificate of Appealability (COA).

April 9, 2021, entered by the United States Court of Appeals for the Seventh Circuit.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 23, 2021
Decided April 9, 2021

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 21-1118

JEFFERY MITCHELL, *Petitioner-Appellant*, *v.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 20 C 1563
LEONTA JACKSON, *Respondent-Appellee.*	Matthew F. Kennelly, *Judge.*

ORDER

Jeffery Mitchell has filed a notice of appeal from the denial of his post-judgment motion in a closed action under 28 U.S.C. § 2254, as well as an application for a certificate of appealability. This court has 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. Mitchell's motion to supplement the record is DENIED.

Jeffery Mitchell #R74032
Pontiac Correctional Center
P.O. Box 99
Pontiac, IL 61764-0000

APPENDIX B

Order of the United States Court of Appeals for the Seventh Circuit Denying Petitioner's Petition for Rehearing with Suggestion of Rehearing En Banc.

Entered on May 24, 2021, by the United States Court of Appeals for the Seventh Circuit.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

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

ORDER

May 24, 2021

By the Court:

No. 21-1118	JEFFREY MITCHELL, Petitioner - Appellant v. LEONTA JACKSON, Warden, Respondent - Appellee
Originating Case Information	
District Court No: 1:20-cv-01563 Northern District of Illinois, Eastern Division District Judge Matthew F. Kennelly	

Upon consideration of the **PETITIOIN FOR REHEARING WITH SUGGESTION OF REHEARING EN BANC**, construed as a motion to recall the mandate and for leave to file a petition for rehearing, filed on May 24, 2021, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED**.

APPENDIX C

Order of the United States District Court for the Northern District of Illinois, Eastern Division, denying Petitioner's Rule 60(b) Motion.

Entered on December 24, 2020, in the United States District Court for the Northern District of Illinois, Eastern Division.

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

Jeffery Mitchell, (R74032), Petitioner, v. Anthony Wills, Warden, Respondent.	Case No. 20 C 1563 Hon. Matthew F. Kennelly

ORDER

(Filed Dec. 24, 2020)

The Court denies Petitioner's motions for relief from judgment [29, 30] and instructs the Clerk to update the docket to: (1) reflect that Petitioner is incarcerated at the Pontiac Correctional Center; (2) terminate Respondent Wills; (3) add Leonta Jackson, Warden, Pontiac Correctional Center as Respondent; and, (4) alter the case caption to *Mitchell v. Jackson.*

STATEMENT

Petitioner Jeffery Mitchell, a prisoner at Pontiac Correctional Center, filed a *pro se* habeas corpus petition under to 28 U.S.C. § 2254 challenging his 2012 murder conviction in Cook County. The Court dismissed the case as untimely under 28 U.S.C. § 2244(d) and denied Petitioner's motion to alter or amend the judgment. Petitioner appealed, but the Seventh Circuit denied his request for a certificate of appealability. Petitioner has moved for relief from judgment. The prohibition on second and successive habeas corpus

petitions prohibits a prisoner from raising a Rule 60 motion that attacks the Court's prior resolution of habeas corpus claims on the merits. *Banister v. Davis*, 140 S. Ct. 1698, 1709 (2020). However, defects in a habeas corpus proceeding, "like the mistaken application of a statute of limitations" calculation can be challenged through a Rule 60 motion. *Id.* at 1709 n.7. So the Court has jurisdiction to consider the motion.

In evaluating the Rule 60 motion, the Court is mindful that the Seventh Circuit rejected Petitioner's appeal of the dismissal of this case. "[T]he appellate decision severely limits the kinds of considerations open. Unless the parties bring to the district judge's attention the sort of circumstance that justifies modification under Fed. R. Civ. P. 60(b), the district judge must take the appellate decision as conclusive." *Barrow v. Falck*, 11 F.3d 729, 731 (7th Cir. 1993). The Court sees no basis to reopen this case under Rule 60. In the motions, Petitioner argues for the first time in this proceeding that the Court should calculate the statute of limitations under 28 U.S.C. § 2244(d)(1)(B) because the state court denied him access to court transcripts. The Court calculated the statute of limitations under § 2244(d)(1)(A). Petitioner also argues for the first time that he is entitled to equitable tolling. The problem is that these arguments are made much too late. "'Rule 60(b) does not provide relief simply because litigants belatedly present new facts or arguments after the district court made its final ruling.'" *Delaney v. McCann*, 229 F. App'x 419, 422 (7th Cir. 2007) (quoting *Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 387 (6th Cir. 2001)).

The present motions represent Petitioner's fourth bite at the apple regarding the statute of limitations. The three preceding attempts were his response to the show cause order prior to dismissal, the post judgment motion to alter or amend, and his request for a certificate of appealability before the Seventh Circuit. The Court overrules Petitioner's attempt to raise the new arguments in the present motions for the first time at this late stage.

Date: Dec. 24, 2020

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

APPENDIX D

Order of the United States District Court for the Northern District of Illinois, Eastern Division, Dismissing Petitioner's § 2254 petition as untimely.

Entered on June 22, 2020, in the United States District Court for the Northern District of Illinois, Eastern Division.

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

Jeffery Mitchell, (R74032), Petitioner,	)	
	)	Case No. 20 C 1563
v.	)	Hon. Matthew F. Kennelly
Alex Jones, Warden, Respondent.	)	

ORDER

(Filed Jun. 22, 2020)

The Court denies petitioner's habeas corpus petition [1] and declines to issue a certificate of appealability. The Clerk is directed to enter judgment dismissing the petition tor habeas corpus.

STATEMENT

Petitioner Jeffery Mitchell, a prisoner at Menard Correctional Center, has filed a *pro se* habeas corpus petition under 28 U.S.C. § 2254 challenging his 2012 murder conviction in Cook County. Petitioner was charged with committing first degree murder when he was 17 years old. Generally minors under 18 in Illinois are prosecuted in juvenile court. 705 ILCS 405/5-120. But Illinois law requires certain juvenile cases to be automatically transferred to criminal court. 705 ILCS 405/5-130. Petitioner's case was automatically transferred, as he was charged with committing first degree murder when he was at least 16. Petitioner challenges the constitutionality of the Illinois automatic transfer

requirement and argues that the state court violated his rights by not holding a hearing on his claim.

As explained in greater detail in the Court's April 17, 2020 show cause order, the petition appeared untimely based on the information alleged by Petitioner himself The Court may raise the statute of limitations at this initial stage because Petitioner alleged the elements of the defense. As explained in the order, the Court calculated Petitioner's one-year limitations period under 28 U.S.C. § 2244(d)(1)(A).[1] This period ran out upon the expiration of the time to withdraw his guilty plea, which occurred either in February or March 2012, as the petition states that Petitioner pled guilty in January 2012 and had 30 days to withdraw his plea. *See Gonzalez v. Thaler*, 565 U.S. 134, 150 (2012); *Hendrix v. Nicholson*, No. 13 C 0493, 2013 WL 1499040, at *2 (N.D. Ill. Apr. 11, 2013); Ill. S. Ct. R. 604(d). Thus the limitations period expired in either February or March 2013, and Petitioner took no further action until he filed a motion for relief from judgment in the state court in May 2016. That had no effect on the statute of limitations, which had already expired in 2013. *Dolls v. Chambers*, 454 F.3d 721, 723 (7th Cir. 2006)).

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[1] Petitioner asserts four claims. The first three challenge the constitutionality of the automatic transfer provision and are governed by § 2244(d)(1)(A). Petitioner's fourth claim is that the state court failed to grant him a hearing on his petition for relief from judgment as required by state law. This claim is non-cognizable; a prisoner is not entitled to federal habeas corpus relief for a violation of state law. *Estelle v. McGuire*, 502 U.S. 62 67-68 (1991).

Petitioner has responded to the show cause order. First, he argues that the statute of limitations does not apply to his case because he is challenging an unconstitutional statute that may be challenged at any time because it is void. This is a principle of Illinois law, *In re N.G.*, 115 N.E.3d 102, 120 (Ill. 2018), but there is no corresponding standard excusing the application of the statute of limitations in a federal habeas corpus proceeding. *Howard v. Hardy*, No. 13-cv-1014, 2013 WL 3943251, at *2 (C.D. Ill. July 30, 2013) (rejecting argument that 28 U.S.C. § 2244(d) is inapplicable to a habeas corpus petition because Illinois criminal judgment was void and therefore could be attacked at any time). Federal law, not Illinois law, controls the scope of the federal habeas corpus statute. *Felker v. Turpin*, 518 U.S. 651, 664 (1996).

Second, Petitioner argues the Court misapplied § 2244(d)(1)(A), asserting that the one-year period ended upon the completion of the motion for relief from judgment proceedings. A motion for relief from judgment is a request for collateral relief. *Illinois v. Vincent*, 871 N.E.2d 17, 22 (Ill. 2007). Although the motion is filed in the same proceeding as the challenged judgment, "it is not a continuation of the original action." *Id.* Thus Petitioner's § 2244(d)(1)(A) date occurred upon the expiration of the period to withdraw his guilty plea.

Next, Petitioner asserts that the limitations period should be calculated under 28 U.S.C. § 2244(d)(1)(C), not § 2244(d)(1)(A). Section 2244(d)(1)(C) starts the one-year period "on 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." 28 U.S.C. § 2244(d)(1)(C). Petitioner argues that the § 2244(d)(1)(C) date is January 25, 2016, the issuance date of *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). *Montgomery* holds that *Miller v. Alabama*, 567 U.S. 460 (2012), is retroactive in collateral proceedings. *Montgomery*, 136 S. Ct. at 736. *Miller* says a court cannot impose a sentence of life without parole on a juvenile for murder unless the sentencing court considers the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing. But the relevant date for § 2244(d)(1)(C) is the date the right is recognized by the Supreme Court, not the date it is held to be retroactive. *Johnson v. Robert*, 431 F.3d 992, 992-93 (7th Cir. 2005) (per curiam) (citing *Dodd v. United States*, 545 U.S. 353 (2005)). The relevant date for Petitioner's § 2244(d)(1)(C) argument is the issuance of *Miller*, not *Montgomery*.

It is questionable whether *Miller* even applies to this case. Petitioner received a 20-year sentence for the murder he committed as a juvenile; *Miller* governs the imposition of a life sentence on a juvenile without the possibility of parole. *Miller*, 567 U.S. at 465. Though the Seventh Circuit has extended *Miller* to very long sentences for juveniles that are de facto life sentences, *McKinley v. Butler*, 809 F.3d 908, 911 (7th Cir. 2016), a 20-year sentence likely would not be considered a de facto life sentence. Moreover, *Miller* involves the

Eighth Amendment's prohibition on cruel and unusual punishment. *Miller*, 567 U.S. at 465. Petitioner makes no cruel and unusual punishment claim; he asserts due process and equal protection claims.

But assuming Petitioner can avail himself of *Miller* for § 2244(d)(1)(C) purposes, his petition is still untimely. *Miller's* issuance date is June 25, 2012, meaning that the statute of limitations expired on June 25, 2013. Petitioner did not file his motion for relief from judgment until May 2016, long after the statute of limitations had expired.

Petitioner's final argument is that his limitations period should be calculated under § 2244(d)(1)(D), which starts the statute of limitations on "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)(D). The one-year period commences when the factual predicate of the claims could have been discovered through due diligence, not when the factual predicate was discovered or the legal significance of the event was understood. *Owens v. Boyd*, 235 F.3d 356, 359 (7th Cir. 2000). Petitioner contends his automatic transfer from juvenile to adult criminal court is unconstitutional. The factual predicate, the automatic transfer, was an event occurring during the pretrial proceedings and easily identifiable. Petitioner argues that the factual predicate of his claim is *Montgomery*, as that decision allowed him to bring his claim retroactively on collateral review. Section 2244(d)(1)(D) speaks of the underlying factual event for a claim, not a court decision

supporting it. 28 U.S.C. § 2244(d)(1)(D) ("The date on which the *factual predicate* of the claim or claims presented could have been discovered through the exercise of due diligence.") (emphasis added); *see Lo v. Endicott*, 506 F.3d 572, 575-76 (7th Cir. 2007) (discussing *Johnson v. United States*, 544 U.S. 295, 306-07 (2005)).

Even if Petitioner is correct that his claim did not accrue for purposes of § 2244(d)(1)(D) until *Miller* was made retroactive, his petition would still be untimely. The Illinois Appellate Court held *Miller* retroactive as early as November 30, 2012. *Illinois v. Morfin*, 981 N.E.2d 1010, 1022 (Ill. App. Ct. 2012). The Supreme Court of Illinois held *Miller* was retroactive on March 20, 2014. *Illinois v. Davis*, 6 N.E.3d 709, 720 (Ill. 2014). Given *Morfin* and *Davis*, Petitioner did not need *Montgomery* to bring his claim in an Illinois court. Additionally, the Supreme Court of Illinois rejected due process challenges to the automatic transfer provision as early as 1984, and on October 17, 2014, rejected a renewed challenge to the automatic transfer requirement in light of *Miller*. *Illinois v. Patterson*, 25 N.E.3d 526, 548-50 (Ill. 2014).

For these reasons, the Court concludes that the habeas corpus petition is untimely. The Court also notes that Petitioner does not make an equitable tolling argument, and none is suggested from the record. Notably, the statute of limitations expired in 2013. Petitioner took no action until 2016 when he filed his motion for relief from judgment, and he provides no excuse for his multiple years of inactivity.

The Court dismisses the habeas corpus petition and declines to issue a certificate of appealability, as Petitioner cannot make a substantial showing of the denial of a constitutional right or that reasonable jurists would debate this Court's resolution of the case. *Arredondo v. Huibregtse*, 542 F.3d 1155, 1165 (7th Cir. 2008) (citing 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

Date: 6/22/2020

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

APPENDIX E

Order of the United States District Court for the Northern District of Illinois, Eastern Division, denying Petitioner's Rule 59(e) Motion.

Entered on August 17, 2020, in the United States District Court for the Northern District of Illinois, Eastern Division.

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

Jeffery Mitchell, (R74032), Petitioner,	)	
v.	)	Case No. 20 C 1563
Alex Jones, Warden, Respondent.	)	Hon. Matthew F. Kennelly

ORDER

(Filed Aug. 17, 2020)

The Court denies Petitioner's motion to alter or amend judgment [14] and denies as moot his motion to use an unapproved form [15] and motion for appointment of counsel [16]. The Clerk is instructed to: (1) terminate Respondent Jones; (2) add Petitioner's present custodian, Anthony Wills, Warden, Menard Correctional Center, as Respondent; and, (3) alter the case caption to *Mitchell v. Wills.*

STATEMENT

Petitioner Jeffery Mitchell has moved to alter the Court's judgment dismissing his *pro se* habeas corpus petition under 28 U.S.C. § 2254. The Court denies the motion, as it did not make a manifest error of law or fact when it dismissed the petition, and Petitioner does not point to newly discovered evidence. *Burritt v. Ditlefsen*, 807 F.3d 239, 252-53 (7th Cir. 2015).

As set forth in greater detail in the Court's show cause and dismissal orders, the one-year statute of limitations period for filing Petitioner's habeas corpus petition, 28 U.S.C. § 2244(d)(2), expired in 2013. Petitioner's filing of a motion for relief from judgment in the state courts in 2016 was irrelevant to the statute of limitations calculation because the period had expired long before that. Petitioner's present motion challenges the Court's treatment of the 2016 motion for relief from judgment, arguing it is "properly filed" for purposes of 28 U.S.C. § 2244(d)(2). It is true that the 2016 motion is "properly filed" for purposes of § 2244(d)(2) if it was filed in compliance with all applicable state laws and rules. *Simms v. Acevedo*, 595 F.3d 774, 778 (7th Cir. 2010) (citing *Artuz v. Bennett*, 531 U.S. 4, 9 (2000)). The key point, however, is that the 2016 motion was filed three years *after* the federal statute of limitations expired. For this reason, whether the 2016 motion was "properly filed" is irrelevant to the statute of limitations. *Dolis v. Chambers*, 454 F.3d 721, 723 (7th Cir. 2006) (quoting *Escamila v. Jungwirth*, 426 F.3d 868, 870 (7th Cir. 2005) ("'The state court's willingness to entertain a belated collateral attack on the merits does not affect the timeliness of the federal proceeding.'")). Section 2244(d)(2) excludes time from the one-year limitations period, but it cannot be used to salvage an already untimely petition. *Teas v. Endicott*, 494 F.3d 580, 581-82 (7th Cir. 2007).

Petitioner also challenges the Court's prior ruling declining to issue a certificate of appealability. His arguments focus on the merits of his underlying

constitutional claim. However, the Court properly declined to issue a certificate of appealability as there is no substantial argument in the resolution of the statute of limitations issue. *Davis v. Borgen*, 349 F.3d 1027, 1029 (7th Cir. 2003).

The Court made no error in dismissing this case and declining to issue a certificate of appealability. The Court therefore denies Petitioner's motion to alter or amend the judgment. His motions for appointment of counsel, to use an unauthorized form, and any other pending motions, are denied as moot.

Date: August 17, 2020

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

APPENDIX F

Official copy and Text of 28 U.S.C. § 2244(d)(1)

POST-CONVICTION RELIEF: THE APPEAL

§2244. FINALITY OF DETERMINATION

(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;

(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.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent

judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

APPENDIX G

Official copy and text of 28 U.S.C. § 2253

2019 28 USCS § 2253

2019 United States Code Archive

United States Code Service > TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE > Part VI. PARTICULAR PROCEEDINGS > CHAPTER 153. HABEAS CORPUS

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 [*28 USCS 2255*] before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [*28 USCS 2255*].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

History

HISTORY:

Act June 25, 1948, ch 646, *62 Stat. 967*; May 24, 1949, ch 139, § 113, *63 Stat. 105*; Oct. 31, 1951, ch 655, § 52, *65 Stat. 727*; April 24, 1996, *P. L. 104-132*, Title 1, § 102, *110 Stat. 1217*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Amendment Notes

1949.

1951.

1996.

Prior law and revision:

1948 ACT.

Based on *title 28, 1940 ed., §§ 453(a)* and 466 (March 10, 1908, ch 76, *36 Stat. 40;* Feb. 13, 1925, ch 229, §§ 6, 13, *43 Stat. 940, 942*; June 29, 1938, ch 806, *52 Stat. 1232*).

This section consolidates paragraph (a) of section 463, and section 466 of title 28, U.S.C., 1940 ed.

The last two sentences of *section 463(a) of title 28, U.S.C.*, 1940 ed., were omitted. They were repeated in *section 452 of title 28, U.S.C.*, 1940 ed. (See reviser's note under section 2241 of this title.).

Changes were made in phraseology.

1949 Act

This section corrects a typographical error in the second paragraph of section 2253 of title 28.

Amendment Notes

1949.

Act May 24, 1949, in the second paragraph, substituted "section 3042" for "section 3041".

1951.

Act Oct. 31, 1951, in the second paragraph, substituted "to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his"

for "of removal issued pursuant to section 3042 of Title 18 or the".

1996.

Act April 24, 1996, substituted this section for one which read:

"§ 2253. Appeal.

"In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.