

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

PETER FOWLER,)
Petitioner,)
v.) No. 19 C 1498
ANTHONY WILLS, Warden,) Judge John Z. Lee
Menard Correctional Center,)
Respondent.)

ORDER

A jury found Petitioner Peter Fowler guilty of armed robbery in November 2002. Fowler's *pro se* habeas corpus petition pursuant to 28 U.S.C. § 2254 challenges his conviction. For the reasons below, his petition is dismissed as untimely.

Background

After his conviction but before his sentencing, Fowler filed a postconviction petition that was denied, and the judgment was eventually affirmed on November 30, 2005. *See* Resp't's Ex. C, 2/18/03 Pet. Post Conviction Relief, ECF No. 16-3; Resp't's Ex. E, 4/8/04 Tr., ECF No. 16-5; Resp't's Ex. F, *People v. Fowler*, No. 1-04-1347 (Ill. App. Ct. Nov. 30, 2005), ECF No. 16-6. He also filed a petition for relief from judgment that was denied, and that judgment was eventually affirmed on July 27, 2007. *See* Resp't's Ex. G, 7/27/07 App. Ct. Order, ECF No. 16-7.

During sentencing, the trial court declared Fowler to be a habitual criminal based, in part, on a criminal conviction in Missouri, and sentenced him to life in prison. *See id.* at 1. Fowler then appealed his conviction and sentence, but the Illinois

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Appellate Court affirmed the judgment of the trial court. Resp't's Ex. A, *People v. Fowler*, No. 1-03-1285 (Ill. App. Ct. Jan. 21, 2005), ECF No. 16-1. Fowler filed a petition for leave to appeal to the Illinois Supreme Court, which was denied. Resp't's Ex. B, *People v. Fowler*, No. 100404, 833 N.E.2d 5 (Ill. 2005), ECF No. 16-2.

With his direct appeals exhausted, Fowler filed two postconviction petitions, in January and August 2006, respectively. Those petitions were denied, and after consolidation of the appeals, the judgments were affirmed. Resp't's Ex. I, 4/11/08 App. Ct. Order, ECF No. 16-9. The Illinois Supreme Court denied his petition for leave to appeal. Resp't's Ex. J, *People v. Fowler*, No. 106599, 897 N.E.2d 258 (Ill. Sept. 24, 2008), ECF No. 16-10.

Fowler attempted to file a third postconviction petition in June 2009, but the state courts denied him leave to file it. See Resp't's Ex. M, 7/27/09 Tr. at 3:21-4:2, ECF No. 16-13; Resp't's Ex. N, *People v. Fowler*, No. 1-09-2243 (Ill. App. Ct. Jan 14, 2011), ECF No. 16-14; Resp't's Ex. O, *People v. Fowler*, No. 112042, 949 N.E.2d 1100 (Ill. May 25, 2011), ECF No. 16-15. Fowler filed the instant habeas corpus petition, on February 28, 2019. Pet. Writ Habeas Corpus, at 1, ECF No. 1.

Analysis

Respondent argues that Fowler's petition is time-barred. Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody." 28 U.S.C. § 2244(d)(1). That limitations period usually starts on "the date on which the judgment became final by the conclusion of direct review or the

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expiration of the time for seeking such review.” *Id.* § 2244(d)(1)(A). “This one-year period is statutorily tolled for the ‘time during which a properly filed application for State post-conviction or other collateral review . . . is pending.’” *Carpenter v. Douma*, 840 F.3d 867, 869 (7th Cir. 2016) (quoting 28 U.S.C. § 2244(d)(2)).

A straightforward application of these principles confirms that Fowler’s petition is time-barred. The limitations period started to run on August 23, 2005, the first day that Fowler could no longer seek direct review before the United States Supreme Court. *See Gonzalez v. Thaler*, 565 U.S. 134, 150 (2012) (holding that, for petitioners who fail to seek a writ of certiorari, “the judgment becomes final . . . when the time for pursuing direct review in [the Supreme] Court, or in state court, expires”); *see also* Sup. Ct. R. 13 (“[A] petition for a writ of certiorari . . . is timely when it is filed . . . within 90 days after entry of the judgment.”).

Fowler’s pending postconviction petition and petition for relief from judgment paused the clock until July 27, 2007, and his postconviction petitions filed in 2006 continued to pause the clock until September 24, 2008, when the Illinois Supreme Court denied Fowler’s petition for leave to appeal in the consolidated postconviction appeals. *See Lawrence v. Florida*, 549 U.S. 327, 332 (2007) (postconviction certiorari petition does not toll limitations period under § 2244(d)(2)).

The limitations period thus started running on September 24, 2008, and expired 365 days later, on September 24, 2009. And, although Fowler attempted to file a third postconviction petition in June 2009, the state courts denied him leave to file it. *See* Resp’t’s Ex. M, 7/27/09 Tr. at 3:21–4:2; Resp’t’s Ex. N, *People v. Fowler*,

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No. 1-09-2243 (Ill. App. Ct. Jan 14, 2011); Resp’t’s Ex. O, *People v. Fowler*, No. 112042, 949 N.E.2d 1100 (Ill. May 25, 2011). Because the state courts denied him leave to file his petition, it was not a properly filed application and did not toll the limitations period under section 2244(d)(2). *See Martinez v. Jones*, 556 F.3d 637, 638–39 (7th Cir. 2009). Accordingly, the Court concludes that Fowler’s habeas corpus petition, which was filed on February 28, 2019, came nearly ten years after the statute of limitations expired.

Fowler suggests that this Court should disregard the statute of limitations because he has asserted an actual innocence claim. *See* Pet’r’s Reply at 12, ECF No. 18. It is true that “actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar . . . or . . . expiration of the statute of limitations.” *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). “A claim of innocence must be both credible *and* founded on new evidence,” however. *Arnold v. Dittman*, 901 F.3d 830, 836–37 (7th Cir. 2018) (emphasis added).

Fowler’s actual innocence claim is based on stale evidence. First, his innocence claim is based on a co-defendant’s deposition testimony taken in 1979 and affidavit dated January 20, 2016. *See* Pet’r’s Exs., Stinson Dep. at 19 of 70, ECF No. 1. In addition, his claim of innocence is based on constitutional claims that he settled with police officers for \$450 in 2003. *See* Pet’r’s Exs., Satisfaction of Judgment at 55 of 70. Because Fowler’s actual innocence claim rests on evidence that is rather long in the tooth, he cannot avoid the statute of limitations. Accordingly, the statute of limitations bars his petition for a writ of habeas corpus.

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Conclusion

For the reasons given above, Fowler's petition for a writ of habeas corpus is dismissed. The Court declines to issue a certificate of appealability because Fowler has not made a "substantial showing of the denial of a constitutional right" such that reasonable jurists could debate this Court's resolution of the case. *See* 28 U.S.C. § 2253(c)(2); *Sanchez-Rengifo v. Caraway*, 789 F.3d 532, 535–36 (7th Cir. 2015) (citing *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000)). The Clerk is instructed to: terminate Jacqueline Lashbrook as Respondent; enter Anthony Wills, Menard Correctional Center's current warden, as Respondent; alter the case caption to *Fowler v. Wills*; and enter a judgment in favor of Respondent and against Petitioner. This case is terminated.

IT IS SO ORDERED

ENTER: 5/21/21



JOHN Z. LEE
United States District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 28, 2022
Decided February 15, 2022

Before

FRANK H. EASTERBROOK, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-2230

PETER FOWLER,
Petitioner-Appellant,

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

v.

No. 19-cv-1498

ANTHONY WILLS,
Respondent-Appellee.

John Z. Lee,
Judge.

O R D E R

Peter Fowler has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. We have reviewed the 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, we deny the request for a certificate of appealability and Fowler's motions for the appointment of counsel and to proceed in forma pauperis.