

FILED: February 23, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7413
(1:20-cv-01110-CCE-JLW)

WINFRED SCOTT SIMPSON

Petitioner - Appellant

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix A

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

WINFRED SCOTT SIMPSON,

Petitioner,

v.

NORTH CAROLINA
DEPARTMENT OF PUBLIC
SAFETY,

Respondent.

1:20-CV-1110

ORDER AND JUDGMENT

The Recommendation of the United States Magistrate Judge was filed in accordance with 28 U.S.C. § 636(b) and the Clerk served the Recommendation on the parties. The petitioner filed objections. Doc. 15.

The Court agrees with Magistrate Judge that the § 2254 petition is untimely. Mr. Simpson contends that the one-year time limit does not begin to run "until after Petitioner's final state appeal," appearing to contend that his appeal from the denial of his motion for appropriate relief is the operative appeal. But as the Magistrate Judge explained, this is not correct. Doc. 12 at 8. He has not shown grounds for equitable tolling.

Upon de novo review of the objections, the Court concludes they do not undermine the Magistrate Judge's analysis. The Recommendation is adopted in full.

IT IS THEREFORE ORDERED AND ADJUDGED that the Respondent's motion to dismiss, Doc. 8, is **GRANTED** and the petitioner's § 2254 petition is **DISMISSED**.

A certificate of appealability shall not issue.

This the 5th day of August, 2021.


UNITED STATES DISTRICT JUDGE

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

WINFRED SCOTT SIMPSON,)	
)	
Petitioner,)	
)	
v.)	1:20CV1110
)	
NORTH CAROLINA DEPARTMENT)	
OF PUBLIC SAFETY,)	
)	
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 2.) Respondent has filed an answer (Docket Entry 7), a motion to dismiss (Docket Entry 8), and a brief supporting that motion (Docket Entry 9). Petitioner, acting *pro se*, filed a response (Docket Entry 11.) Petitioner has also filed a motion to clarify his request to proceed *in forma pauperis* (Docket Entry 6.) This matter is now ready for a ruling.

Background

On March 24, 2010, Howard M. Williams, Jr., was taking a lunchtime walk along a trail near his workplace in Greensboro, North Carolina, when he happened upon what appeared to be a severed, charred leg sticking out of a garbage bag. Trial Tr. Vol. 3 (Dec. 12, 2012) (Docket Entry 9-15 at 56-57). He and his coworkers contacted the police, who linked what turned out to be the partially burned, dismembered remains of white female to a missing-persons report filed by Petitioner on March 23. *State v. Simpson*, 234 N.C. App. 118, *2, 761

S.E.2d 754 (Table) (May 20, 2014). Petitioner had reported that his wife, Retha Simpson, had left home on March 19 after they had argued about her communicating with another man, and he could not locate her. *Id.* He was worried because she was bipolar and had recently stopped taking her medication. *Id.*

After the discovery of the body, which medical examiners determined to have been Retha's, police arrived at Petitioner's home to investigate. *Id.* Petitioner answered the door after several minutes, out of breath, and wearing a pair of shorts that appeared to have red stains on them. *Id.* Petitioner allowed the officers to enter his home and look around, while they had a conversation. *Id.* The officers observed, among other things, a box of carpet shampoo, a carpet shampooer, a can of lighter fluid, a hose, a hand truck, a boom, a shovel, and a 55-gallon metal barrel. *Id.* Upstairs, they discovered red stains in the bathroom and a closet empty of women's clothing. *Id.*

Realizing that they would need a search warrant to do a more thorough investigation, the officers asked Petitioner to accompany them to the police station. Trial Tr. Vol. 6 (Dec. 17, 2013) (Docket Entry 9-19 at 7-8). Petitioner did so voluntarily and submitted to a nearly three-hour interrogation before he stated that he needed a lawyer. (*Id.*) The officers took him back home, where the warranted search was underway, then took him to the Drury Inn to spend the night. (*Id.* at 8-9.) The next day, Officer Cheek went to the motel to execute an arrest warrant for first-degree murder and found Petitioner in the back of a patrol car. (*Id.* at 9.) Emergency services had been called because Petitioner had attempted to kill himself with an overdose of over-the-counter sleeping pills. (*Id.*) Officer Cheek conducted a brief

interview, during which Petitioner verbally waived his *Miranda* rights, while they waited for an ambulance to take Petitioner to the hospital. (*Id.* at 10.)

At trial, the State argued that Petitioner, angry that Retha had been cheating on him, murdered Retha and attempted to dispose of her body by dismembering and burning it. Trial Tr. Vol. 9 (Dec. 20, 2012) (Docket Entry 9-22 at 99-100). The State introduced evidence from the dump site, including tire-track impressions that matched Petitioner's truck, photographs of two impressions on the ground that matched the diameter of the barrel from Petitioner's home, and photographs and testimony regarding the identity and condition of Retha's body. *Simpson*, 234 N.C. App. at *2. The State also introduced testimony from Retha's friends regarding the attempts Petitioner made to convince them that Retha had run away with another man. *Id.* at *1. Additionally, the State showed that the police had found traces of Retha's blood in Petitioner's home, UPS boxes containing her clothes and personal effects in the attic, and a receipt from Walmart that illustrated that Petitioner had purchased a reciprocating saw on the night of March 19, 2010. *Id.* at *2.

Petitioner also testified at trial, claiming he had accidentally killed Retha in self-defense when he placed her in a sleeper hold while she was attacking him in the bathroom. *Id.* at *3. Petitioner's evidence tended to show that Petitioner had been diagnosed with Asperger's Syndrome and had a difficult time with social interactions. *Id.* at *4. Petitioner lived with his parents until age thirty and only went to school or work while living with them. Trial Tr. Vol. 7 (Dec. 18, 2012) (Docket Entry 9-20 at 13-14).

Petitioner met Retha on a telephone chat line for singles. (*Id.* at 38.) They started dating, and Retha moved in with Petitioner after a year. (*Id.* at 41.) They were married a year

later. (*Id.*) Petitioner described his relationship with Retha as complementary: she was outgoing and social, while he was responsible and practical. Trial Tr. Vol. 6 (Docket Entry 9-19 at 91-92). Petitioner explained that Retha struggled with bipolar disorder and borderline personality disorder. *Simpson*, 234 N.C. App. at *3. She had been verbally and physically abusive toward him, even sexually abusing him once. *Id.* He explained that she had attacked his masculinity and bragged that she could kill him and get away with it. *Id.* Despite her abuse, Petitioner testified that he loved her and did not want to lose her; he had agreed to an open marriage arrangement and to join a swingers' club to save their relationship. Trial Tr. Vol. 6 (Docket Entry 9-19 at 99).

Petitioner explained that on the morning of March 19, 2010, Retha was extraordinarily angry with him because he had looked at her laptop to investigate a conversation she had been having with another man. *Simpson*, 234 N.C. App. at *3. Describing her as in a manic phase of her disorder, which she had not been controlling with medication, he testified that she physically attacked him. *Id.* Petitioner escaped into the master bathroom and locked the door. *Id.* Thinking Retha would calm down, Petitioner started taking a shower to prepare for work. *Id.* Unfortunately, Retha instead picked the lock and tore back the shower curtain. *Id.* She began hitting Petitioner in the head with a wooden shower brush. *Id.* When Petitioner noticed that his head was bleeding, he snatched the brush from her hand, shoved her back, and tried to escape the bathroom. *Id.* Retha tackled him before he could get away and continued beating him about the head with her hands. *Id.* Terrified that Retha was about to kill him, Petitioner attempted to place Retha in a "sleeper hold." *Id.* He managed to get his arm around her neck

and did his best to knock her out by placing pressure on the carotid arteries on both sides of her neck. *Id.*

Petitioner's sleeper hold did not work as intended; instead of being rendered unconscious, Retha died. *Id.* at *4. Upon discovering that Retha was not responding, Petitioner attempted CPR, but it did not work. *Id.* Petitioner then panicked. Over the course of the next few days, he dismembered the body, attempted to burn it in a 55-gallon barrel, and tried to make it look as if Retha had left him for another man. *Id.* When he thought the body was completely burned, he took the barrel to a spot in the woods and emptied it. *Id.* He attempted to maintain the cover-up until after he was arrested on March 25. *Id.*

After just over three hours of deliberation (separated by a two-week break for the holidays), the jury found Petitioner guilty of first-degree murder, and the judge sentenced him to life in prison without parole, as required by statute, on January 3, 2013. Trial Tr. Vol. 11 (Jan. 3, 2013) (Docket Entry 9-23). Petitioner appealed his conviction, but the North Carolina Court of Appeals affirmed it on May 20, 2014 in an unpublished opinion. *Simpson*, 234 N.C. App. at *1. The North Carolina Supreme Court denied his petition for discretionary review ("PDR") on August 19, 2014. (Docket Entry 2 at 2.) Petitioner did not file a motion for appropriate relief ("MAR") until October 1, 2019. (*Id.* at 3.) The Guilford County Superior Court denied his MAR on December 20, 2019. (*Id.*) The North Carolina Supreme Court denied his petition for certiorari on June 3, 2020. (*Id.* at 4.) Petitioner filed the instant petition in this Court on December 15, 2020. (Docket Entry 2.)

Petitioner's Grounds

Petitioner raises six grounds for relief. They are: (1) the trial court erred by suppressing evidence regarding the victim that was relevant to Petitioner's self-defense argument (*id.* at 5); (2) Petitioner was interrogated without his consent or a waiver of his *Miranda* rights, and the court did not exclude the results of those interrogations (*id.* at 6); (3) the trial court admitted evidence gained in violation of Petitioner's Fourth Amendment rights when it allowed a recording of an second interrogation made without a *Miranda* waiver (*id.* at 8); (4) the evidence was not sufficient to submit the charges of first- and second-degree murder to the jury (*id.* at 10); (5) both trial and appellate counsel were constitutionally ineffective for failure to object to or appeal admission or suppression of certain evidence (*id.* at 11); and (6) Petitioner's right to an impartial jury was violated by a jury tainted by pretrial publicity and that admitted that it would be affected by gory or violent photographs (*id.* at 12).

Discussion

Respondent argues that Petitioner filed the petition beyond the one-year limitations period imposed by 28 U.S.C. § 2244(d)(1) and requests dismissal of the petition. (Docket Entry 8 at 1.) Regarding the one-year statute of limitations that controls habeas-corpus petitions filed under section 2254, 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). Respondent argues that subparagraph (A) applies to Petitioner's case and that his conviction became final on November 17, 2014, ninety days after the North Carolina Supreme Court denied the PDR in his direct appeal. (Docket Entry 9 at 6.) The Court agrees. The record does not reveal any basis for concluding that subparagraphs (B), (C), or (D) of Section 2254(d)(1) apply.

Under subparagraph (A), Petitioner's one-year limitations 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). Petitioner completed his direct-appeal process in the state court and did not file a petition for a writ of certiorari to the United States Supreme Court. "If no petition for a writ of certiorari is filed in the United States Supreme Court, then the limitation period begins running when the time for doing so—90 days—has elapsed." *Hill v. Braxton*, 277 F.3d 701, 704 (4th Cir. 2002) (citation omitted). Petitioner's conviction, therefore, became final on November 17, 2014, ninety days after August 19, 2014, the date the North Carolina Supreme Court denied his PDR.

Petitioner sought post-conviction review upon the filing of his first MAR on October 1, 2019. “The time during which a properly filed application for State post-conviction or other collateral review with respect the pertinent judgment or claim is pending shall not be counted toward any period of limitations under this subsection. 28 U.S.C. § 2244(d)(2). Unfortunately, Petitioner made this filing well after his one-year limitations period had expired on November 17, 2015. The filing of a state post-conviction application, although it may toll the federal habeas corpus statute of limitations, will not restart the clock. *Minter v. Beck*, 230 F.3d 663, 665 (4th Cir. 2000). Petitioner has exceeded the statutory limit for filing his federal habeas petition by nearly four years. This Court may not, therefore, consider the petition.

Furthermore, the Court sees no reason to employ equitable tolling to extend Petitioner’s limitations period. Equitable tolling may apply 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 fails to satisfy either of these prongs.

Petitioner claims that Prison Legal Services (“PLS”) took an extraordinarily long time to decide not to assist him with his post-conviction filings, but he gives no evidence of this delay. Furthermore, unfamiliarity with the legal process and lack of representation do not constitute grounds for equitable tolling, because they represent ordinary, rather than extraordinary, circumstances for a prisoner. *See United States v. Sosa*, 364 F.3d 507, 512 (4th Cir. 2004); *see also Harris v. Hutchinson*, 209 F.3d 325, 331 (4th Cir. 2000). Additionally, this Court has held that a delay in services by PLS is insufficient to warrant equitable tolling. *See Rhew v. Beck*, 349 F. Supp. 2d 975, 978 (M.D.N.C. 2004) (unpublished) (Osteen, Sr., J, adopting

recommendation of Eliason, M.J.) (refusing to toll when prisoner cited delays by PLS), *appeal dismissed*, 158 F. App'x 410 (4th Cir. 2005); see also *Gray v. Lewis*, No. 1:11CV91, 2011 WL 4022787, at *3 (M.D.N.C. Sept. 9, 2011) (unpublished) (concluding that lack of prison libraries and delay in receipt of support from PLS did not warrant equitable tolling). Petitioner has given no credible excuse as to why he missed his filing deadline by such a large margin. This Court therefore sees no reason to toll the statute of limitations equitably.

Petitioner's Section 2254 petition is out of time and should be dismissed.

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 Clarification re Application to Proceed *In Forma Pauperis* (Docket Entry 6) is **DENIED** as moot.

IT IS THEREFORE RECOMMENDED that Respondent's motion to dismiss (Docket Entry 8) be **GRANTED**, that the § 2254 petition (Docket Entry 2) be **DISMISSED**, and that Judgment be entered dismissing this action.



Joe L. Webster
United States Magistrate Judge

June 25, 2021
Durham, North Carolina

FILED: March 28, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7413
(1:20-cv-01110-CCE-JLW)

WINFRED SCOTT SIMPSON

Petitioner - Appellant

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

Respondent - Appellee

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Rushing, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix D