

Received 10/18/2022

FILED: October 12, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6583
(1:21-cv-02781-ELH)

DANIEL PATRICK DEGOTO

Petitioner - Appellant

v.

WILLIAM S. BOHRER

Respondent - Appellee

O R D E R

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 Wynn, Judge Thacker, and Judge Heytens.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: August 23, 2022

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(1:21-cv-02781-ELH)

DANIEL PATRICK DEGOTO

Petitioner - Appellant

v.

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JUDGMENT

In accordance with the decision of this court, this 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

PER CURIAM:

Daniel Patrick Degoto seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2254 petition for failure to exhaust state court remedies. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). “[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court entered its order on December 2, 2021. Degoto filed the notice of appeal, at the earliest, on April 13, 2022. *See Houston v. Lack*, 487 U.S. 266, 276 (1988) (establishing prison mailbox rule). Because Degoto failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We deny Degoto's motions to appoint counsel, for judicial request and clarification, and for bail or release pending 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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DANIEL PATRICK DEGOTO,

Petitioner,

v.

Civil Action No.: ELH-21-2781

WILLIAM S. BOHRER,

Respondent.

ORDER

For the reasons stated in the foregoing Memorandum, it is this 2nd day of December, 2021, by the United States District Court for the District of Maryland, hereby ORDERED that:

1. The Petition for Writ of Habeas Corpus IS DISMISSED, without prejudice;
2. Petitioner's Motion for Leave to Proceed in Forma Pauperis (ECF 2) IS DENIED, as moot;
3. A Certificate of Appealability SHALL NOT issue;
4. The Clerk SHALL PROVIDE a copy of this Order and the foregoing Memorandum to petitioner; and
5. The Clerk SHALL CLOSE this case.

/s/
Ellen L. Hollander
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
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DANIEL PATRICK DEGOTO,

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v.

Civil Action No.: ELH-21-2781

WILLIAM S. BOHRER,

Respondent.

MEMORANDUM

Petitioner Daniel Patrick Degoto filed a Petition for Writ of Habeas Corpus on October 29, 2021. ECF 1. He challenges the validity of his conviction of March 29, 2019, in the Circuit Court for Baltimore County, Maryland, for first degree murder. ECF 1 at 1. Since initiation of this case, petitioner has filed three supplements to the petition. ECF 3; ECF 4; ECF 5. Petitioner also filed a motion for leave to proceed in forma pauperis. ECF 2. However, petitioner submitted the \$5.00 filing fee on November 29, 2021, and therefore I will deny his motion as moot. For the reasons stated below, the Petition will be dismissed, without prejudice.

Based on Degoto's numerous filings, it appears that both a direct appeal of his conviction and post-conviction proceedings are still pending. Petitioner submits an order from the Circuit Court for Baltimore County indicating that his post-conviction hearing is currently scheduled for March 4, 2022. ECF 3-1 at 3. He also submits a briefing notice from the Maryland Court of Special Appeals, indicating the record on appeal was docketed on October 19, 2021, and dictating a briefing schedule. ECF 4 at 20.

Before this court may consider the merits of claims raised under 28 U.S.C. § 2254, which challenge the validity of a state court conviction, those claims must be exhausted in the state courts.

See 28 U.S.C. § 2254(b) and (c); *see also Preiser v. Rodriguez*, 411 U.S. 475, 491 (1973). This exhaustion requirement is satisfied by seeking review of the claim in the highest state court with jurisdiction to consider it. For a person convicted of a criminal offense in Maryland this may be accomplished either on direct appeal or in post-conviction proceedings.

To exhaust a claim on direct appeal, it must be raised in an appeal, if one is permitted, to the Maryland Court of Special Appeals and then to the Maryland Court of Appeals by way of a petition for writ of certiorari. *See Md. Code, Cts. & Jud. Proc. § 12-201 and § 12-301*. If an appeal of right is not permitted, as in cases where a guilty plea is entered, exhaustion can be accomplished by filing an application for leave to appeal to the Court of Special Appeals. *See Md. Code, Cts. & Jud. Proc. § 12-302(e)*. If the Court of Special Appeals denies the application, there is no further review available, and the claim is exhausted. *See Md. Code, Cts. & Jud. Proc. § 12-202*. However, if the application is granted but relief on the merits of the claim is denied, petitioner must file a Petition for Writ of Certiorari to the Maryland Court of Appeals. *See Williams v. State*, 292 Md. 201, 210-11 (1981).

Further, petitioner must also avail himself of state post-conviction proceedings for claims that are not appropriate for relief on direct appeal. To exhaust a claim through post-conviction proceedings, it must be raised in a petition filed in the circuit court where petitioner was convicted and, if unsuccessful, must also be raised in an application for leave to appeal to the Court of Special Appeals. *See Md. Code, Crim. Proc. § 7-109*. If the Court of Special Appeals denies the application, there is no further review available, and the claim is exhausted. *See Md. Code, Cts. & Jud. Proc. § 12-202*. However, if the application is granted but relief on the merits of the claim is denied, the petitioner must file a petition for writ of certiorari to the Court of Appeals. *See Williams, supra*.

Petitioner must also comply with a one-year filing deadline to file a petition with this Court following exhaustion of his claims. Petitioner is forewarned that the one-year filing deadline begins to run on the date his conviction is final. If he no longer has a direct appeal available to him, that one year period began to run on March 29, 2019. The one-year period is “tolled” during the time a properly filed post-conviction petition is pending in state court. This means that until a properly filed post-conviction petition is filed, the one-year time limitation for federal habeas corpus continues to run and will begin to run again once post-conviction proceedings as well as any appeal of the results are concluded. Once post-conviction proceedings are completed through state court appellate review, whatever time is left on the one-year time limit is the period of time petitioner has to seek federal habeas corpus review.

Given these constraints and in light of Petitioner’s ongoing appeal and post-conviction proceedings, the instant petition will be dismissed, without prejudice, to accord petitioner adequate time and notice to comply with both the exhaustion and filing deadline requirements.

When a district court dismisses a habeas petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both “(1) ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right’ and (2) ‘that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.’” *Rose v. Lee*, 252 F.3d 676, 684 (4th Cir. 2001) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Petitioner fails to meet this standard and a Certificate of Appealability shall not issue.

A separate Order follows.

December 2, 2021
Date

/s/
Ellen L. Hollander
United States District Judge

Received 12/02/2021

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WILLIAM S. BOHRER,

Respondent.

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↓
Problem