United States Court of Appeals for the Fifth Circuit

No. 22-10225

United States Court of Appeals
Fifth Circuit
FILED
July 27, 2022
Lyle W. Cayce
Clerk

CARLOS SANTANA R. GARCIA,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Northern District of Texas
USDC No. 6:20-CV-84

ORDER:

Carlos Santana R. Garcia, Texas prisoner # 01317728, moves for a certificate of appealability (COA) to appeal the dismissal, as time barred, of his 28 U.S.C. § 2254 petition challenging his conviction for aggravated sexual assault of a child. Garcia contends that he is entitled to delayed commencement of 28 U.S.C. § 2244(d)'s one-year limitation period based on a state-created impediment to timely filing, § 2244(d)(1)(B), as well as his late discovery of the factual predicate of one of his 14 ineffective assistance of counsel claims, § 2244(d)(1)(D). He also argues that he is entitled to equitable tolling of the limitation period.

To obtain a COA, Garcia must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To meet that burden, he must show "at least, that jurists of reason would find it debatable whether the [§ 2254] 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).

Garcia fails to make the requisite showing. Accordingly, the motion for a COA is DENIED.

/s/ *Leslie H. Southwick*

LESLIE H. SOUTHWICK
United States Circuit Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

CARLOS SANTANA R. GARICA,
Institutional ID No. 1317728

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 6:20-CV-00084-H

JUDGMENT

For the reasons stated in the Court's order entered today, it is ordered, adjudged, and decreed that this petition for writ of habeas corpus is dismissed with prejudice.

Dated February 23, 2022.

JAMES WESLEY HENDRIX
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

CARLOS SANTANA R. GARCIA,
Institutional ID No. 1317728

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

No. 6:20-CV-00084-H

ORDER

In this 28 U.S.C. § 2254 habeas action, Carlos Santana R. Garcia—a state prisoner proceeding pro se—challenges the legality of his 2005 Texas conviction for aggravated sexual assault of a child. (*See* Dkt. Nos. 1, 2, 4.) Respondent answers that the Court should dismiss Garcia's petition because it is barred by the applicable statute of limitations and otherwise has no merit. (*See* Dkt. No. 20.) Garcia did not reply to Respondent's answer.

For the following reasons, the Court concludes that Garcia's petition must be dismissed as untimely.

1. Background

On February 17, 2005, a Texas jury found Garcia guilty of aggravated sexual assault of a child and sentenced him to 30 years' imprisonment. (*See* Dkt. No. 20-1 at 3–5.) The 51st District Court, Tom Green County, Texas entered judgment on the conviction, which was affirmed by the Third Court of Appeals of Texas (COA) on July 7, 2006. *See Garcia v. State*, No. 03-05-00278-CR, 2006 WL 1867756 (Tex. App.–Austin July 7, 2006, no pet.). Garcia did not file petition for discretionary review (PDR).

On October 23, 2018—12 years after the COA affirmed his conviction—Garcia filed a state application for a writ of habeas corpus, claiming that his trial counsel, William R. Moore, rendered ineffective assistance during plea negotiations and at trial. On June 25, 2019, Garcia's convicting court issued findings of fact and conclusions of law, recommending that the Texas Court of Criminal Appeals (TCCA) deny Garcia's application. (*See* Dkt. No. 20-1 at 14–25.) On January 15, 2020, the TCCA—after conducting an independent review of the record—denied Garcia's application without a written order on the findings of the trial court. (*Id.* at 9.) On August 11, 2020, Garcia filed the instant federal habeas petition.[1] As he did in his state application, Garcia complains that Moore was constitutionally ineffective during plea negotiations and at trial. (*See* Dkt. Nos. 1, 2, 4.)

2. Discussion

A. Statute of Limitations

It is undisputed that Garcia's federal habeas petition is subject to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which establishes a one-year time limitation for a state prisoner to file a federal habeas corpus petition. *Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009); *see* 28 U.S.C. § 2244(d)(1). The limitation period begins to run from the latest of the following 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;

[1] *See Spotville v. Cain*, 149 F.3d 374, 377 (5th Cir. 1998) ("[A] prisoner's habeas petition is filed for purposes of determining the applicability of the AEDPA, when he delivers the papers to prison authorities for mailing.").

(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.

28 U.S.C. § 2244(d)(1)(A)–(D).

However, 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. *Id.* at § 2244(d)(2).

B. Equitable Tolling

AEDPA's one-year limitation period can be equitably tolled since it is not a jurisdictional bar. *United States v. Patterson*, 211 F.3d 927, 930 (5th Cir. 2000). However, a petitioner is entitled to equitable tolling only if he shows: (1) that he has been pursuing his rights diligently; and (2) that some extraordinary circumstance stood in his way and prevented timely filing. *Lawrence v. Florida*, 549 U.S. 327, 336 (2007).

Equitable tolling is only available in cases presenting rare and exceptional circumstances and is not intended for those who sleep on their rights. *Manning v. Epps*, 688 F.3d 177, 183 (5th Cir. 2012). Equitable tolling is not warranted merely because a petitioner proceeds pro se and is not well-versed in the law. *Saahir v. Collins*, 956 F.2d 115, 118–19 (5th Cir. 1992). A mistaken interpretation of the law or lack of knowledge of filing deadlines are not "rare and exceptional circumstances" that justify equitable tolling. *See Wion v. Quarterman*, 567 F.3d 146, 149 (5th Cir. 2009); *see also Felder v. Johnson*, 204 F.3d 168, 172 (5th Cir. 2000).

3. Analysis

The parties dispute when the limitation period began running. Respondent argues that, under Section 2244(d)(1)(A), the limitation period began to run on August 7, 2006—when Garcia's judgment became "final." Garcia implicitly disagrees. Although he does not expressly argue that a different subsection of Section 2244(d)(1) governs, Garcia contends that his petition should not be barred because it was not until after he read a May 2018 magazine article that he first "became aware" that Moore had provided him erroneous legal advice about the consequences of pleading guilty to a lesser offense. (*See* Dkt. No. 1 at 7, 23.)

After liberally construing Garcia's pleadings, the Court will analyze his argument under Section 2244(d)(1)(D) and the doctrine of equitable tolling.

A. Factual Predicate

Garcia appears to argue that, under Section 2244(d)(1)(D), the limitation period began to run in May 2018 because that is when he first learned or understood that Moore had potentially given him erroneous legal advice, which he allegedly relied on in rejecting a plea offer. Specifically, Garcia alleges that, in April 2004, Moore erroneously told him that he would still have to register as a sex offender if he pled guilty to a lesser offense. (*See* Dkt. No. 4.) Garcia claims that he did not realize that Moore's statement was erroneous until he read a May 2018 magazine article about "Texas registration laws." In other words, Garcia implies that he did not know or discover the factual basis or predicate of *one* of his 14 ineffective-assistance-of-counsel (IAC) claims until he read the article.

Garcia misunderstands the meaning of "factual predicate" in Section 2244(d)(1)(D). Under this section, the limitation period began to run when Garcia could have discovered the *facts* that underlie his claims—here, in 2004 when Moore allegedly advised him that he would have to register as sex offender and at his trial in 2005—not the date when Garcia

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first learned or understood that Moore's advice was potentially erroneous or when he otherwise acquired evidence or legal materials to support and prove his claims. *See In re Davila*, 888 F.3d 179, 189 (5th Cir. 2018) (citations omitted). "Section 2244(d)(1)(D) does not convey a statutory right to an extended delay while a habeas petitioner gathers every possible scrap of evidence that might, by negative implication, support his claim." *Flanagan v. Johnson*, 154 F.3d 186, 199 (5th Cir. 1998).

Garcia's 14 IAC claims are based on alleged constitutional errors that occurred before and during his 2005 trial. But he does not demonstrate that he was unaware of or otherwise unable to discover the *factual* predicate of those alleged errors until he read the magazine article. For example, Garcia does not clam that he was not present at his trial or otherwise not informed about the consequences of pleading guilty to a lesser offense—and therefore not in a position to discover the factual predicate of his claims—until he read the magazine article.

For these reasons, the Court concludes that Section 2244(d)(1)(D) does not govern the timeliness of Garcia's federal petition.

B. Finality of Judgment

Because Garcia has failed to demonstrate that Sections 2244(d)(1)(B), (C), or (D) apply, the Court concludes that Section 2244(d)(1)(A) governs the timeliness of his federal petition. Under Section 2244(d)(1)(A), the limitation period begins to run on the date the judgment becomes final on direct review or when the time for seeking direct review expires. *See* 28 U.S.C. § 2244(d)(1)(A).

When a state criminal defendant halts his direct appeal before he has an opportunity to petition the United States Supreme Court for certiorari, his conviction becomes final under AEDPA when the time for seeking further direct review in state court expires. *See Hernandez v. Thaler*, 630 F.3d 420, 422 n.3 (5th Cir. 2011) (citing *Roberts v. Cockrell*, 319 F.3d

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690, 694 (5th Cir. 2003)). Under Texas law, "a PDR is considered to be part of the direct review process, which ends when the petition is denied or when the time available for filing lapses." *Dolan v. Dretke*, 168 F. App'x 10, 11 (5th Cir. 2006) (quoting *Salinas v. Dretke*, 354 F.3d 425, 428 (5th Cir. 2004)). Under Texas Rule of Appellate Procedure 68.2(a), a PDR must be filed within 30 days after either the day the court of appeals' judgment was rendered or the day the last timely motion for rehearing or timely motion for en banc reconsideration was overruled by the court of appeals. *See* Tex. R. App. P. 68.2(a).

In Garcia's case, the COA rendered its judgment on July 7, 2006. Garcia did not file a motion for rehearing or en banc reconsideration. Accordingly, under Rule 68.2(a), Garcia had until 30 days after the COA rendered its judgment—August 7, 2006—to file a PDR. Because Garcia did not do so, the Court concludes that, for purposes of Section 2244(d)(1)(A), the "time for seeking direct review" expired—and the limitation period began to run —on August 7, 2006. Thus, absent any statutory or equitable tolling, Garcia had to file his federal petition one year later, by August 7, 2007.[2] But Garcia filed his petition on August 11, 2020—13 years too late.

C. Equitable Tolling

Garcia appears to argue that, even if Section 2244(d)(1)(A) governs, he is nevertheless entitled to equitable tolling of the limitation period on the same ground previously discussed. The Court disagrees. Not only has Garcia failed to allege or demonstrate that he has been pursuing his rights diligently but, for the same reasons explained above, the Court concludes that Garcia has likewise failed to demonstrate that not

[2] Although a properly filed application for state-post conviction review may, in some instances, toll the limitation period, state applications filed after the expiration of the limitation period do not. *See Davis v. Stephens*, 555 F. App'x 324 (5th Cir. 2014) (citing *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000)); *see also* 28 U.S.C. § 2244(d)(2). Because Garcia filed his state application on October 23, 2018—almost 11 years after the limitation period expired—the Court concludes that the period during which it was pending before the TCCA does not toll the limitation period.

having access to the magazine article—or some other extraordinary circumstance—prevented him from timely filing his federal petition. *See Hatcher v. Quarterman*, 305 F. App'x 195, 196 (5th Cir. 2008). And under the law of this circuit, Garcia's "lack of knowledge of the law, however understandable it may be, does not justify equitable tolling." *See Fierro v. Cockrell*, 294 F.3d 674, 683 (5th Cir. 2002).

Thus, the Court concludes that Garcia has failed to demonstrate that equitable tolling is warranted in this case.

4. Conclusion

For the foregoing reasons, the Court concludes that Garcia's 28 U.S.C. § 2254 petition was filed after the applicable one-year limitation period expired and should, therefore, be dismissed with prejudice.

In addition, the Court concludes that Garcia has failed to show that reasonable jurists would debate whether the Court's procedural ruling was correct and whether he has put forward a valid claim of a constitutional deprivation. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court therefore denies a certificate of appealability. *See* Fed. R. App. P. 22(b)(1); *see also* 28 U.S.C. § 2253(c).

The Court will enter judgment accordingly.

So ordered.

Dated February 25, 2022.

JAMES WESLEY HENDRIX
United States District Judge