

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 30, 2022

Ms. Maura O'Neill Jaite
Office of the Attorney General
of Ohio
30 E. Broad Street
23rd Floor
Columbus, OH 43215

Mr. Alan Singleton
North Central Correctional
P.O. Box 1812
Marion, OH 43301

Re: Case No. 22-3071, Alan Singleton v. Tom Watson
Originating Case No. : 1:19-cv-00249

Dear Counsel and Mr. Singleton,

The Court issued the enclosed Order today in this case. Judgment to follow.

Sincerely yours,

s/Ryan E. Orme
Case Manager
Direct Dial No. 513-564-7079

cc: Ms. Sandy Opacich

Enclosure

No mandate to issue

No. 22-3071

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Jun 30, 2022

DEBORAH S. HUNT, Clerk

ALAN SINGLETON,)
Petitioner-Appellant,)
v.)
TOM WATSON, Warden,)
Respondent-Appellee.)

O R D E R

Before: CLAY, Circuit Judge.

Alan Singleton, a pro se Ohio prisoner, appeals a district court's judgment denying his 28 U.S.C. § 2254 petition for a writ of habeas corpus. He has applied for a certificate of appealability ("COA") and has moved to proceed in forma pauperis ("IFP") on appeal. *See* Fed. R. App. P. 22(b), 24(a)(5).

Singleton was convicted at a bench trial of gross sexual imposition and kidnapping with a sexual-motivation specification. Prosecution witnesses included the victim's mother, a sexual assault nurse examiner ("SANE"), a social worker, and a police detective. The victim, Singleton's four-year-old daughter, did not testify because she had been found incompetent at a pretrial hearing. The trial court merged the counts of conviction and sentenced Singleton to life in prison with the possibility of parole. The Ohio Court of Appeals affirmed the trial court's judgment on June 30, 2016. *State v. Singleton*, 69 N.E.3d 118 (Ohio Ct. App. 2016).

On September 11, 2017, Singleton moved for leave to file a motion for new trial, asserting that the victim's mother had lied under oath and that he had newly discovered evidence of the mother's untreated mental illness. That evidence consisted of a complaint against the mother filed by the Cuyahoga County Division of Children and Family Services on October 27, 2016, alleging that the mother had neglected her children and had "untreated mental health problems, specifically

No. 22-3071

- 2 -

post-traumatic stress disorder, bipolar disorder, depression, and anxiety.” At a hearing on the complaint, the mother conceded the allegation of mental illness. On October 20, 2017, the trial court denied Singleton’s new-trial motion as untimely.

On June 21, 2018, Singleton filed a motion in the Ohio Supreme Court for a delayed appeal of his criminal judgment. The court denied his motion on August 15, 2018.

In his § 2254 petition, filed February 1, 2019, Singleton raised the following claims:

- (1) the evidence presented at trial was insufficient to prove his guilt beyond a reasonable doubt because the SANE nurse expressed doubt about her own statements;
- (2) trial counsel rendered ineffective assistance by failing to expose the SANE nurse’s doubts about her statements;
- (3) the SANE nurse’s testimony was not expressed as a probability and therefore was inadmissible;
- (4) the victim’s statements did not meet the requirements for hearsay exceptions;
- (5) trial counsel rendered ineffective assistance by failing to cross-examine the victim during the competency hearing;
- (6) trial counsel rendered ineffective assistance by failing to properly impeach the mother with a police report;
- (7) trial counsel rendered ineffective assistance by failing to question a police officer about his relationship with the victim’s mother;
- (8) the social worker’s entire testimony was hearsay, depriving Singleton of his right to confront witnesses and his right to a fair trial;
- (9) trial counsel rendered ineffective assistance by failing to obtain a medical expert to identify the victim’s white discharge;
- (10) trial counsel rendered ineffective assistance by failing to impeach the social worker about “tapping” on the victim’s leg;
- (11) new evidence, i.e., the Family Services complaint against the mother, revealed that the mother was incompetent to testify at trial; and
- (12) the trial judge should not have looked at case law when determining guilt.

No. 22-3071

- 3 -

The State responded that Singleton's § 2254 petition was time-barred and that his claims were unexhausted or otherwise procedurally defaulted. Singleton replied that the untimeliness of his petition should be excused due to actual innocence.

A magistrate judge recommended denying Singleton's § 2254 petition as untimely. After considering the Family Services complaint in conjunction with the evidence presented at trial, the magistrate judge concluded that Singleton had not made a sufficient showing of actual innocence to toll the one-year statute of limitations. The magistrate judge observed:

At trial, the sexual assault nurse examiner testified about her findings of redness, swelling, and tissue damage to the victim's genitalia, all of which were consistent with digital touching. A social worker testified that the child-victim pointed to the vaginal area on a drawing and disclosed that Mr. Singleton touched her there with his finger.

The Complaint, on the other hand, does not establish when [the mother] was diagnosed with the identified mental health conditions, whether she suffered from those conditions at the time of trial, or the effect, if any, those conditions may have had on her ability to testify truthfully.

Singleton filed objections, arguing in part that the magistrate judge did not fairly consider all of the evidence.

The district court overruled Singleton's objections, finding that they were merely restatements of his claims. The court declined to issue a COA.

In his COA application, Singleton argues that he was denied due process when the district court refused to review his objections *de novo* and that his proof of actual innocence should excuse the untimeliness of his petition.

An individual seeking a COA is required to make a substantial showing of the denial of a federal constitutional right. 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When the appeal concerns a district court's procedural ruling, a COA should issue if the petitioner demonstrates "that jurists of reason would find it debatable whether the petition states a valid claim

No. 22-3071

- 4 -

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).

A § 2254 petition must be filed within one year after the latest of certain events, including “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review” and “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). A prisoner may toll the limitations period by properly filing a state application for post-conviction review. 28 U.S.C. § 2244(d)(2).

If a prisoner fails to file a timely § 2254 petition, the prisoner is entitled to equitable tolling of the limitations period upon a showing that he was diligently pursuing his rights but was prevented from timely filing the petition by an extraordinary circumstance. *Holland v. Florida*, 560 U.S. 631, 649 (2010); *Jones v. United States*, 689 F.3d 621, 627 (6th Cir. 2012). Alternatively, the untimeliness of a petition may be excused on the ground of actual innocence when a petitioner “show[s] that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.” *McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)).

Although Singleton arguably waived any challenge to whether his § 2254 petition was timely filed by tendering deficient objections, this court may excuse his default in the interests of justice. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 458 (6th Cir. 2012).

In any event, jurists of reason would agree that Singleton did not file his § 2254 petition within one year of the conclusion of direct review. His deadline for filing a direct appeal with the Ohio Supreme Court was August 14, 2016, 45 days after the Ohio Court of Appeals affirmed his criminal judgment. *See* Ohio S.Ct.Prac.R 7.01(A)(1). The limitations period then began to run and expired one year later on August 14, 2017. Singleton did not file his petition until 2019. Moreover, he did not toll the limitations period by seeking collateral review in state court within the one-year period, and his subsequent attempts to do so did not revive the limitations period. *See Vroman v. Brigano*, 346 F.3d 598, 602 (6th Cir. 2003).

No. 22-3071

- 5 -

Jurists of reason would agree that Singleton is not entitled to equitable tolling of the limitations period because he has not demonstrated that he was prevented from timely filing his § 2254 petition by an extraordinary circumstance. Furthermore, for the reasons stated by the magistrate judge, jurists of reason would agree that Singleton has failed to make a showing of actual innocence sufficient to excuse the untimeliness of the petition. *See Perkins*, 569 U.S. at 399.

To the extent that Singleton seeks to raise a free-standing claim of actual innocence, the Supreme Court has not recognized such a claim in a non-capital case. *See Herrera v. Collins*, 506 U.S. 390, 404 (1993); *Hodgson v. Warren*, 622 F.3d 591, 601 (6th Cir. 2010).

Accordingly, the court **DENIES** Singleton's COA application and **DENIES** as moot his IFP motion.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALAN SINGLETON,)	CASE NO. 1:19CV249
Petitioner,)	
v.)	JUDGE BENITA Y. PEARSON
NEIL TURNER, in his official capacity as Warden,)	
Respondent.)	<u>MEMORANDUM OF OPINION AND ORDER</u>
)	[Resolving ECF Nos. <u>29</u> , <u>31</u> , <u>32</u> , <u>35</u>]

Pending before the Court is Petitioner Alan Singleton's Objection to Magistrate Judge Darrell A. Clay's ("Magistrate Judge Clay") Report and Recommendation. ECF No. 35.¹ The case was referred to Magistrate Judge Clay for a Report and Recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.2. Magistrate Judge Clay recommended that the Court deny the petition because it was untimely. ECF No. 34. Also, Magistrate Judge Clay recommended that Petitioner's pending motions to supplement the record (ECF Nos. 29, 31, 32) be denied as moot.

For the following reasons, Petitioner's objections are overruled, the Report and Recommendation is adopted, the petition is dismissed, and Petitioner's pending motions to supplement the record are denied as moot.

¹ Petitioner filed a duplicative copy of his objections to Magistrate Judge Clay's Report and Recommendation. ECF No. 36.

(1:19CV249)

I. Background

In March 2015, Petitioner was charged with multiple sexual violence-related offenses in Cuyahoga County Common Pleas Court.² In April 2015, Petitioner pled not guilty to each charge. After waiving his right to a jury trial, the state trial court found Petitioner guilty of gross sexual imposition and kidnapping in July 2015. In August 2015, Petitioner filed a Motion for Judgment of Acquittal that was denied 8 days later. Petitioner was sentenced to life in prison with the possibility of parole, after fifteen years.

In September 2015, with the assistance of newly appointed appellate counsel, Petitioner appealed the conviction and sentence, arguing that (1) the trial court erred by determining that the child witness was incompetent but still allowing the child's statement into evidence, (2) the trial court erred by admitting incriminating statements and impermissible hearsay statements, (3) trial counsel was ineffective because they failed to (i) effectively cross examine the state's expert witness, and (ii) pursue the defense that the child victim's injuries were self-inflicted, (4) due process was denied because the prosecution asserted incorrect sentencing alternatives, and (5) all the convictions are against the manifest weight of the evidence. The state appellate court affirmed the convictions and the sentence in June 2016.

In September 2017, through his appellate counsel, Petitioner filed a Motion for Leave to File a Motion for New Trial. Petitioner claimed that he was entitled to a new trial because the prosecution's main witness lied under oath and suffered from an untreated mental illness. The state trial court denied Petitioner's motion, finding that Petitioner's motion was not filed timely, and failed to meet the clear and convincing evidentiary standard.

² *The State of Ohio v. Alan Singleton*, Case No. CR-15-593884-A.

(1:19CV249)

In June 2018, Petitioner moved the state trial court for an order requiring the prosecuting attorney to turn over exculpatory evidence. The court, interpreting the motion as post-conviction relief, denied the request. That same month, Petitioner appealed both the trial court's denial of the motion and a Motion for Delayed Appeal with the Ohio Supreme Court. As a basis for the delayed appeal, Petitioner asserted legal claims of (1) ineffective assistance of counsel, and (2) perjury. The Ohio Supreme Court denied his motion for delayed appeal in August 2018. Two days after the Ohio Supreme Court's denial, Petitioner filed another Motion for Post-Conviction Relief, which the state trial court denied as untimely.

Petitioner filed the instant habeas petition on February 1, 2019 ([ECF No. 1-3](#)) setting forth twelve grounds for relief under 28 U.S.C. § 2254:

1. “The evidence presented at trial was insufficient to prove petitioner’s guilt beyond a reasonable doubt. The SANE nurse repeatedly expressed doubt in her own statements.” [ECF No. 1-3 at PageID #: 23 – 27](#). (emphasis in original).
2. “Petitioner was denied his right to effective assistance of counsel as guaranteed by the 6th Amendment. Counsel failed to expose the SANE nurse’s doubts.” [ECF No. 1-3 at PageID #: 27 – 29](#). (emphasis in original).
3. “The SANE nurse’s testimony was not expressed as a probability and was therefore inadmissible.” [ECF No. 1-3 at PageID #: 29 – 30](#). (emphasis in original)
4. “The victim’s statements did not meet the requirements to be hearsay exceptions (Ohio R. Evid. 807).” [ECF No. 1-3 at PageID #: 31 – 34](#).
5. “Petitioner was denied his right to effective assistance of counsel as guaranteed by the 6th Amendment. Counsel did not cross-examine the child during the competency hearing.” [ECF No. 1-3 at PageID #: 34](#).
6. “Petitioner was denied his right to effective assistance of counsel as guaranteed by the 6th Amendment. The victim’s mother’s testimony was inconsistent with the police reports.” [ECF No. 1-3 at PageID #: 35 – 37](#).
7. “Petitioner was denied his right to effective assistance of counsel as guaranteed by the 6th Amendment. Counsel failed to question police officer about relationship with victim’s mother.” [ECF No. 1-3 at PageID #: 37 – 38](#).

(1:19CV249)

8. "The social worker's entire testimony was heresay [sic]. He should not have been allowed to testify at all. Petitioner was denied his right to confront witnesses and was denied a fair trial." ECF No. 1-3 at PageID #: 39 – 41.
9. "Petitioner was denied his right to effective assistance of counsel. Counsel did not obtain a medical expert to identify the victim's white discharge." ECF No. 1-3 at PageID #: 41 – 43.
10. "Petitioner received ineffective assistance of counsel. Counsel should have impeached the social worker about "tapping" on the victim's leg." ECF No. 1-3 at PageID #: 44 – 45.
11. "New evidence obtained after trial reveals that the State's main witness, the victim's mother, was incompetent to testify." ECF No. 1-3 at PageID #: 46.
12. "Judge should not have looked at case law when determining petitioner's guilt or innocence." ECF No. 1-3 at PageID #: 46 – 48.

Having found that Petitioner's habeas petition was filed one and a half years after the cutoff, and that Petitioner did not demonstrate entitlement to statutory equitable tolling, Magistrate Judge Clay recommended that it be dismissed as time-barred. ECF No. 34 at PageID #: 873. Relatedly, because the petition was time-barred, Magistrate Judge Clay recommended that Petitioner's pending motions to supplement the record (ECF Nos. 29, 31, 32) be denied as moot. ECF No. 34 at PageID #: 873 – 74. Magistrate Judge Clay further recommended that Petitioner not be granted a certificate of appealability. ECF No. 34 at PageID #: 874.

II. Standard of Review for a Magistrate Judge's Report and Recommendation

When objections have been made to the Magistrate Judge's Report and Recommendation, the District Court standard of review is *de novo*. Fed. R. Civ. 72(b)(3). A district judge: "must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." *Id.* The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." *Id.*

(1:19CV249)

Pursuant to 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), a writ of habeas corpus may not be granted unless the state court proceedings: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d)(1)-(2); *see also Harris v. Stovall*, 212 F.3d 940, 942 (6th Cir. 2000).

A federal court may review a state prisoner’s habeas petition only on the grounds that the challenged confinement violates the Constitution, laws or treaties of the United States. 28 U.S.C. § 2254(a). A federal court may not issue a writ of habeas corpus “on the basis of a perceived error of state law.” *Pulley v. Harris*, 465 U.S. 37, 41 (1984); *see Smith v. Sowders*, 848 F.2d 735, 738 (6th Cir. 1988). Because state courts are the final authority on state-law issues, the federal habeas court must defer to and is bound by the state court’s rulings on such matters. *See Estelle v. McGuire*, 502 U.S. 62, 63 (1991) (“[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions”); *see also Cristini v. McKee*, 526 F.3d 888, 897 (6th Cir. 2008) (“[A] violation of state law is not cognizable in federal habeas [] unless such error amounts to a fundamental miscarriage of justice or a violation of the right to due process in violation of the United States Constitution.”)

III. Discussion

Petitioner raises two objections to Magistrate Judge Clay’s Report and Recommendation. In the first objection, Petitioner claims that Magistrate Judge Clay “did not fairly consider all the evidence in recommending that [the] petition be dismissed, violating the standards set by the U.S. Supreme Court.” ECF No. 35 at PageID #: 876. Petitioner cites the record, specifically

(1:19CV249)

challenging the credibility of the testimony of a nurse at trial. Petitioner avers that the nurse was not certain beyond a reasonable doubt and, therefore, no reasonable juror could have found the Petitioner guilty. ECF No. 35 at PageID #: 876 – 879. In the second objection, Petitioner states that “trial counsel was ineffective in violation of the Sixth Amendment, constituting both cause and prejudice.” ECF No. 35 at PageID #: 879. As support, Petitioner claims trial counsel was ineffective because (1) they did not challenge the testimony of Nurse Bogard, and (2) no medical expert was called. Id. at PageID #: 879 – 881.

Petitioner is unable to meet the requisite standard for habeas relief. The grounds offered by Petitioner are merely a restatement of Grounds One, Two, Three, and Nine raised in the initial petition. Objections to a magistrate judge’s Report and Recommendation are not opportunities to reassert arguments already raised in the original habeas petition. Roberts v. Warden, Toledo Corr. Inst., No. 1:08-CV-00113, 2010 WL 2794246, at *7 (S.D. Ohio July 14, 2010) (“The Court is under no obligation to review de novo objections that are merely perfunctory or an attempt to have the Court reexamine the same arguments set forth in the original petition”); Speed v. Fender, No. 1:18-CV-1296, 2021 WL 4437056, at *8 (N.D. Ohio Sept. 28, 2021) (stating that petitioner’s “restatement of the arguments in his petition is not a proper objection” under § 2254); Warmus v. Larose, No. 14 CV 1925, 2017 WL 392969, at *9 (N.D. Ohio Jan. 30, 2017) (overruling petitioner’s objection because it “merely restates the arguments” in the original petition.). Because Petitioner’s objections were already raised in his original petition, and addressed in Magistrate Judge Clay’s Report and Recommendation, both objections are overruled.

(1:19CV249)

IV. Conclusion

Petitioner's Objections (ECF No. 35) are overruled and the Report and Recommendation (ECF No. 34) is adopted. Alan Singleton's Petition for a Writ of Habeas Corpus (ECF No. 1) is dismissed. Petitioner's pending motions to supplement the record (ECF Nos. 29, 31, 32) are denied as moot.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

December 21, 2021

Date

/s/ Benita Y. Pearson

Benita Y. Pearson
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: August 26, 2022

Ms. Maura O'Neill Jaite
Office of the Attorney General
of Ohio
30 E. Broad Street
23rd Floor
Columbus, OH 43215

Mr. Alan Singleton
North Central Correctional
P.O. Box 1812
Marion, OH 43301

Re: Case No. 22-3071, Alan Singleton v. Tom Watson
Originating Case No. : 1:19-cv-00249

Dear Counsel and Mr. Singleton,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Ryan E. Orme
Case Manager
Direct Dial No. 513-564-7079

cc: Ms. Sandy Opacich

Enclosure

No. 22-3071

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Aug 26, 2022

DEBORAH S. HUNT, Clerk

ALAN SINGLETON,
Petitioner-Appellant,
v.
TOM WATSON, Warden,
Respondent-Appellee.

)
)
)
)
)
)
)
)
)

O R D E R

Before: SILER, MOORE, and WHITE, Circuit Judges.

Alan Singleton, a pro se Ohio prisoner, petitions this Court to rehear its order of June 30, 2022, denying his application for a certificate of appealability (“COA”). *See* Fed. R. App. P. 22(b).

After careful consideration, we conclude that the court did not overlook or misapprehend any point of law or fact when it denied Singleton’s COA application. *See* Fed. R. App. P. 40(a)(2).

Accordingly, we **DENY** Singleton’s petition for rehearing.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk