

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6409

CLEVELAND LEROY COAXUM, JR.,

Petitioner - Appellant,

v.

JEFFREY SNODDY, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at
Roanoke. James P. Jones, Senior District Judge. (7:21-cv-00305-JPJ-PMS)

Submitted: November 17, 2022

Decided: November 22, 2022

Before KING, QUATTLEBAUM, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Cleveland Leroy Coaxum, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cleveland Leroy Coaxum, Jr., seeks to appeal the district court's order dismissing as untimely his amended 28 U.S.C. § 2254 petition. *See Gonzalez v. Thaler*, 565 U.S. 134, 148 & n.9 (2012) (explaining that § 2254 petitions are subject to one-year statute of limitations, running from latest of four commencement dates enumerated in 28 U.S.C. § 2244(d)(1)). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez*, 565 U.S. at 140-41 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Coaxum has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the 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

FILED: November 22, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6409
(7:21-cv-00305-JPJ-PMS)

CLEVELAND LEROY COAXUM, JR.

Petitioner - Appellant

v.

JEFFREY SNODDY, Warden

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

FILED: December 28, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6409
(7:21-cv-00305-JPJ-PMS)

CLEVELAND LEROY COAXUM, JR.

Petitioner - Appellant

v.

JEFFREY SNODDY, Warden

Respondent - Appellee

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge King, Judge Quattlebaum, and
Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

CLEVELAND LEROY COAXUM, JR.,)	
)	
Petitioner,)	Case No. 7:21CV00305
)	
v.)	OPINION AND ORDER
)	
JEFFREY SNODDY, WARDEN,)	JUDGE JAMES P. JONES
)	
Respondent.)	

Cleveland Leroy Coaxum, Jr., Pro Se Petitioner; Timothy J. Huffstutter, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Respondent.

Petitioner Cleveland Leroy Coaxum, Jr., a state inmate proceeding pro se, has filed an Amended Petition for Habeas Corpus (Petition) pursuant to 28 U.S.C. § 2254, challenging his 2016 state convictions. Respondent has filed a Motion to Dismiss and Rule 5 Answer, to which Coaxum has responded. Upon review of the record, I find that the Petition is untimely and the Motion to Dismiss must be granted.

I.

Coaxum pled guilty in the Circuit Court of Bedford County, Virginia, to charges of computer solicitation of a minor and was sentenced by judgment entered August 24, 2016, to three concurrent terms of 30 years, with 20 years suspended. His direct appeals were unsuccessful. On March 4, 2019, Coaxum filed a petition for a writ of habeas corpus in the sentencing court. Cir. Ct. Bedford Cnty, Case No.

CL 19000662-00, R. 207–57.¹ The respondent filed a Motion to Dismiss, Coaxum responded, and on August 28, 2019, counsel for the respondent filed a Notice that counsel would submit to the court a proposed order granting the Motion to Dismiss on or about September 5, 2019. It was certified that a copy of the Notice was sent to inmate Coaxum. R. at 296.²

On September 13, 2019, Coaxum dated and sent to the state court a pleading styled “Notice of Appeal,” stating that he “prays that this honorable court enter this my notice of appeal; should the honorable court err and grant the respondents [sic] motion to dismiss.” R. at. 355. The pleading was filed by the court on September 19, 2019. That same day, the state circuit judge entered the proposed order, granting the Motion to Dismiss. R. at 357–72.

The clerk of the circuit court treated Coaxum’s pleading as a proper notice of appeal, even though dated and filed before the court’s order dismissing his petition, and the record was sent to the Supreme Court of Virginia. While the notice of appeal was considered timely, on March 2, 2021, the clerk of the Supreme Court of Virginia returned the record to the Circuit Court of Bedford County because the time

¹ A petition for a writ of habeas corpus ad subjiciendum may be filed in either a circuit court or the Supreme Court of Virginia. Va. Code Ann. § 8.01-654.

² Two separate state court records were submitted to this court. The lengthy record from the Circuit of Bedford County will be cited as “R.” and the smaller record from the Supreme Court of Virginia will be cited as “Sup. Ct. Rec.”

had expired for the filing in the Supreme Court of Virginia of the required petition for appeal. R. at 376.

On October 4, 2019, Coaxum dated and sent to the Supreme Court of Virginia various documents in a single envelope, all marked filed by the clerk on October 15, 2019. The documents included one which began, “Amended 28 U.S.C. Sec. 225 [sic] HABEAS PETITION [] SUBMITTED TO THIS HONORABLE COURT FOR FILING IN FURTHERANCE OF JUSTICE.” Sup. Ct. Rec. at 1. It was followed by a typed version of the required statutory form for filing a Virginia petition for habeas corpus by an inmate, *see* Va. Code Ann. § 8.01-655(B), together with exhibits consisting of copies of trial court pleadings and orders relating to his prosecution. A another document included was styled, “PETITION,” and began, “Comes now Petitioner, Clevenad L Coaxum Jr (Pro Se), and prays that this Honorable Court grant my 2255 petition” *Id.* at 15. Another document was entitled, “TRUTH AFFIDAVIT,” *id.* at 18, in which Coaxum swore that the facts stated in “my U.S.C. Sec. 2255 petition” were true. *Id.* Finally, there was a document entitled “PETITION FOR APPEAL,” *id.* at 12, which had nothing following but a table of contents and a table of authorities, *id.* at 13, 14.

The Supreme Court of Virginia, construing the documents as seeking habeas relief, denied it as untimely in a brief Order entered on February 18, 2020. *Id.* at 28. *See* Va. Code Ann. 8.01-654 (providing that habeas petition attacking a criminal

conviction must be filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later).

Coaxum signed and dated a motion for reconsideration on February 26, 2020, stating, “My appeal of the Circuit Court’s dismissal of my timely filed habeas petition has been erroneously construed as though it is a new petition for habeas corpus relief – as opposed to the Appeal of the Circuit Court decision.” Sup. Ct. Rec. at 29. The motion was denied by the court on May 14, 2020. *Id.* at 95.

Coaxum initiated the present proceeding by a habeas petition signed by him on June 17, 2020, and filed in the United States District Court for the Eastern District of Virginia. Thereafter he filed an amended petition in the Eastern District and that court transferred the action to this court as the proper venue. Coaxum claims that he received ineffective assistance of counsel in the state prosecution in that his attorney failed to advise him as to Virginia law concerning parole and that his prosecution was racially motivated. He also contends that his lawyer agreed to a continuance of his case without his consent.

II.

A person convicted of a state offense has one year to file a § 2254 petition, starting 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;

v. Watson, 488 F. App'x 694, 697–99 (4th Cir. 2012) (unpublished) (citing *Artuz*). Similarly, the Supreme Court of Virginia's denial as untimely of Coaxum's habeas petition in that court does not qualify as a § 2244(d)(2) extension. *Artuz*, 531 U.S. at 8 (noting that properly filed documents include those in compliance with the time limits for filing).

Even subtracting the time period during which his petition in the state trial court was pending, the present Petition was untimely. Coaxum's state petition in the trial court was filed after 168 days of his one-year limitations period had elapsed. He had 197 days, or until April 3, 2020, after that petition was denied, to file his federal petition. The earliest it can be deemed filed, considering the prison inmate mailbox rule, *see Houston v. Lack*, 487 U.S. 266, 276 (1988), is June 17, 2020, when he signed it.

Coaxum asserts that “[t]he Supreme Court of Virginia has erroneously construed petitioner's Appeal of the denial of his timely filed habeas petition to the Circuit Court - as though petitioner has attempted to file a new habeas petition.” Omibus Mot. ¶ 2, ECF No. 3. In fact, as indicated above, he clearly did file a new habeas petition in the Supreme Court of Virginia. Moreover, the fact that hidden in his papers was a document entitled “Petition for Appeal” does not cure the untimeliness, since the document did not conform to the strict requirements of a petition for appeal in the Supreme Court of Virginia because it did not include specific assignments of error. *See* Va. Sup. Ct. R. 5:17(c)(1)(i) (“If the petition for

appeal does not contain assignments of error, the petition will be dismissed.”); *Christian v. Baskerville*, 232 F. Supp. 2d 605, 607 (E.D. Va. 2001) (holding that habeas petitioner could not exclude from limitations period the time that appeal was before Supreme Court of Virginia because petition for appeal did not include assignments of error and thus was not properly filed), *appeal dismissed*, 47 F. App’x 200 (4th Cir. 2001) (unpublished).

Equitable tolling of the statute of limitations for filing a habeas petition is available only in “those rare instances where — due to circumstances external to the party’s own conduct — it would be unconscionable to enforce the limitation period against the party and gross injustice would result.” *Harris v. Hutcherson*, 209 F.3d 325, 330 (4th Cir. 2000). Generally, a petitioner seeking equitable tolling must demonstrate that he has been diligently pursuing his rights and that some extraordinary circumstances stood in his way to prevent him from filing a timely petition. *See Pace v. DiGuglielmo*, 125 S. Ct. 1807, 1814 (2005); *Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir. 2003). Mere unfamiliarity with the legal process does not support granting such extraordinary relief. *Harris*, 209 F.3d at 330.

III.

For these reasons I find that there is no ground upon which the present motion might be deemed timely filed. Accordingly, the Motion to Dismiss by Respondent, ECF No. 20, is GRANTED and the Amended Petition is DISMISSED.

A Certificate of Appealability is DENIED.

A separate Judgment will be entered.

It is so **ORDERED**.

ENTER: March 28, 2022

/s/ JAMES P. JONES
Senior United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

CLEVELAND LEROY COAXUM, JR.,)

Petitioner,)

v.)

JEFFREY SNODDY, WARDEN,)

Respondent.)

Case No. 7:21CV00305

JUDGMENT

JUDGE JAMES P. JONES

Judgment is entered in favor of the Respondent and the Clerk shall close the case.

ENTER: March 28, 2022

/s/ JAMES P. JONES
Senior United States District Judge

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

Cleveland Leroy Coaxum, Jr.,
Petitioner,

v.

Tracy Ray,
Respondent.

)
)
)
)
)
)
)

1:20cv747 (CMH/TCB)

ORDER

On March 17, 2021, the Court directed the Attorney General of Virginia to respond to petitioner Cleveland Coaxum's petition for writ of habeas corpus within thirty days. [Dkt. No. 12]. The Court examined the docket on April 17, 2021, the Attorney General's deadline for compliance, and came to recognize that the conviction petitioner challenges in this action was entered in the Bedford Circuit Court, located in Bedford County, which is itself located in the Western District of Virginia. See Dkt. No. 11; 28 U.S.C. § 127. In light of the substantial advantages in resolving federal habeas actions in the federal district court that is nearest to the court where the underlying conviction arose, see Braden v. 30th Judicial Cir. Ct. of Ky., 410 U.S. 484, 497-99 (1973), it is hereby

ORDERED that this action be and is TRANSFERRED to the United States District Court for the Western District of Virginia, Roanoke Division; and it is further

ORDERED that petitioner direct all future filings to the Clerk's Office for the United States District Court for the Western District of Virginia, Roanoke Division.

The Clerk is directed to (i) transfer all filings in this action and a copy of the docket sheet to the Clerk of the United States District Court for the Western District of Virginia, Roanoke Division, (ii) send a copy of this Order to petitioner, and (iii) close this civil action.

Entered this 14th day of May 2021.

Alexandria, Virginia

Claude M. Hutton
United States District Judge