

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 22-12689-J

JAMES JONATHAN MITCHELL,

Petitioner - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

Appeal from the United States District Court
for the Northern District of Florida

ORDER:

James Mitchell, a Florida prisoner serving a 25-year sentence for trafficking heroin, conspiring to possess heroin, and resisting a law enforcement officer with violence, moves for a certificate of appealability (“COA”) and permission to proceed *in forma pauperis* (“IFP”) in his appeal from the district court’s dismissal of his *pro se* 28 U.S.C. § 2254 habeas corpus petition as untimely.

To obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the district court dismissed a habeas petition on procedural grounds, the movant must show that reasonable jurists would debate (1) whether the motion states a valid claim of the denial of a constitutional right and (2) whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Antiterrorism and Effective Death Penalty Act (“AEDPA”) imposes a one-year statute of

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limitations for filing a § 2254 federal habeas petition that begins to run from: (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; or (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. ~~28 U.S.C. § 2244(d)(1)(A)-(B).~~

A state prisoner's conviction generally becomes final when the 90-day period in which to file a *certiorari* petition in the U.S. Supreme Court expires. *Nix v. Sec'y for Dep't of Corr.*, 393 F.3d 1235, 1236-37 (11th Cir. 2004). District courts must ordinarily dismiss a § 2254 petition without prejudice if the petitioner has not exhausted his state post-conviction remedies. *See Rose v. Lundy*, 455 U.S. 509, 519-20 (1982).

The limitation period is statutorily tolled for “[t]he 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.” 28 U.S.C. § 2244(d)(2). If the state post-conviction action is filed following the expiration of the federal limitation period, however, such state action cannot toll the federal one-year limitation period, because there is no time period remaining to toll. *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000). The limitations period may be equitably tolled if the petitioner shows an extraordinary circumstance that prevented timely filing, and a causal connection between the alleged extraordinary circumstances and the late filing of the petition. *See Arthur v. Allen*, 452 F.3d 1234, 1253 (11th Cir. 2006); *San Martin v. McNeil*, 633 F.3d 1257, 1267 (11th Cir. 2011).

Here, the district court properly dismissed Mitchell's § 2254 petition as untimely. The record reveals that the state appellate court affirmed his convictions and sentence on May 24, 2017, and denied rehearing on August 4, 2017. The district court correctly concluded that his

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convictions became final on November 2, 2017, upon expiration of the 90-day period for seeking *certiorari* in the U.S. Supreme Court, from the state appellate court's August 4, 2017, denial of his motion for a rehearing. *See Nix*, 393 F.3d at 1236-37. Accordingly, ~~absent any statutory or equitable tolling, Mitchell had until November 2, 2018, to file his § 2254 petition.~~ *See* 28 U.S.C. § 2244(d)(1)(A).

Even if Mitchell's Fla. R. Crim. P. 8.01 motion for jail credit did statutorily toll the limitations period starting at the 159-day mark, until 30 days after the state court's April 16, 2018, denial, the period for him to file his § 2254 petition would have expired 206 days later, on ~~December 8, 2018,~~ and his March 2021 filing of the petition still would have been untimely. However, Mitchell's Fla. R. Crim. P. 3.850 motion could not have tolled the limitations period, as he filed it on May 12, 2019, after the limitation period already had expired on December 8, 2018, and, thus, there was no period remaining to toll. *See Webster*, 199 F.3d at 1259.

Mitchell also ~~failed to establish an entitlement to equitable tolling based on his "placeholder petition," his suffering from psychosis, or the alleged unconstitutional state action in committing him to a mental health treatment facility.~~ Mitchell would not have been entitled to tolling based on his "placeholder petition" because district courts are generally required to dismiss a § 2254 petition if the petitioner has not exhausted his state post-conviction remedies, and Mitchell did not initiate any form of state post-conviction relief until 2018. *See Rose*, 455 U.S. at 519-20. Mitchell also would not be entitled to tolling based on his claims that he suffered from psychosis or unconstitutional state action, as he ~~failed to demonstrate a causal connection between his alleged mental issues, or the state's purported wrongful acts, and the untimeliness of his § 2254 petition.~~ *See San Martin*, 633 F.3d at 1267.

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Accordingly, Mitchell's motion for a COA is DENIED, and his motion for IFP status is DENIED AS MOOT.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

JAMES JONATHAN MITCHELL,

Petitioner,

v.

Case No. 3:21cv533-LC/MAF

**RICKY D. DIXON, Secretary,
Florida Department of Corrections,**

Respondent.

_____/

ORDER

This matter is before the Court on the Report and Recommendation of the U.S. Magistrate Judge dated June 1, 2022 (ECF No. 35), that Respondent's motion to dismiss (ECF No. 32) be granted and the third amended petition for writ of habeas corpus (ECF No. 30), filed pursuant to 28 U.S.C. § 2254, be dismissed as untimely. The parties have been furnished a copy of the Report and Recommendation and have been afforded an opportunity to file objections pursuant 28 U.S.C. § 636(b)(1). I have made a de novo determination of the objections filed.

Having considered the Report and Recommendation, and the objections thereto, I have determined the Report and Recommendation should be adopted.

Accordingly, it is now **ORDERED** as follows:

1. The Report and Recommendation (ECF No. 35) is adopted and incorporated by reference in this order.

2. The Clerk shall enter judgment stating, "Respondent's motion to dismiss (ECF No. 32) is **GRANTED** and the petition for writ of habeas corpus (ECF No. 30) is **DISMISSED**. Any certificate of appealability is **DENIED** and leave to appeal in forma pauperis is also **DENIED**."

3. The Clerk shall close the file.

DONE AND ORDERED on this 14th day of July, 2022.

s/L.A. Collier

LACEY A. COLLIER
SENIOR UNITED STATES DISTRICT JUDGE