

APPENDIX

APPENDIX

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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-1877

[Filed May 9, 2023]

Micah Sherif Matthews)
Petitioner - Appellant)
)
v.)
)
Chris Tripp)
Respondent - Appellee)
)

Appeal from U.S. District Court for the
Southern District of Iowa - Central
(4:22-cv-00220-JEG)

JUDGMENT

Before LOKEN, COLLOTON, and BENTON, Circuit
Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

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May 09, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

No. 4:22-cv-00220-JEG

[Filed April 11, 2023]

MICAH SHERIF MATTHEWS,)
Petitioner,)
)
v.)
)
CHRIS TRIP,)
Respondent.)

ORDER GRANTING MOTION TO DISMISS

Petitioner Micah Sherif Matthews filed this pro se petition for writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1. Matthews is now represented by counsel. ECF No. 7. Respondent Chris Trip moves to dismiss the § 2254 petition based on untimeliness. ECF No. 8. Matthews resists the motion. ECF No. 20. For the following reasons, the Court finds the petition is untimely and must be dismissed.

I. BACKGROUND

Trip sets forth the factual and procedural background in this case.¹ ECF No. 8-1 at 4–9. Matthews does not dispute the dates set forth by Trip. *See* ECF No. 20-1 at 2.

In 2009, Matthews was convicted of first-degree kidnapping, second-degree kidnapping, first-degree burglary (with a charge of first-degree sexual abuse merging into his conviction of first-degree kidnapping). *State v. Matthews*, No. 09-0743, 2010 Iowa App. LEXIS 1158, at *1 (Iowa Ct. App. Oct. 6, 2010). The Iowa Court of Appeals affirmed his judgment and sentence. *Id.* at *9. The Iowa Supreme Court denied his application for further review on December 6, 2010. *See* Respondent’s Exhibit, ECF No. 8-2 at 1. *Procedendo* was issued December 10, 2010. *Id.*

On February 17, 2011—before the time for applying for a writ of certiorari from the Supreme

¹ The timeline in abbreviated form is as follows:

12/06/2010 Direct Review Concluded
02/17/2011 Begin First Application for State Postconviction Relief
03/06/2011 Expiration of 90-day Period to Apply for Writ of
Certiorari from United States Supreme Court
10/10/2017 First State Postconviction Relief Action Concluded
10/27/2017 Begin First Petition for Federal Habeas Relief
pursuant to 28 U.S.C. § 2254
11/29/2018 Begin Second Application for State Postconviction
Relief
07/23/2019 Voluntary Dismissal of First § 2254 Petition
06/22/2022 Second State Postconviction Relief Action Concluded
06/29/2022 Begin Second Petition for Federal Habeas Relief
pursuant to 28 U.S.C. § 2254

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Court expired—Matthews filed a state postconviction relief action. Respondent’s Exhibit, ECF No. 8-3 at 20. The district court denied his application for postconviction relief, and the Iowa Court of Appeals affirmed. *Matthews v. State*, No. 15-2001, 2017 Iowa App. LEXIS 821, at *1, 6 (Iowa Ct. App. Aug. 16, 2017). The Iowa Supreme Court denied further review, and procedendo was issued October 10, 2017. ECF No. 8-3 at 1.

On October 27, 2017, Matthews placed his first petition for federal habeas relief under 28 U.S.C. § 2254 in the mail. *See Matthews v. Wachtendorf*, 4:17-cv-00386-RGE-HCA, ECF No. 8-5 at 7. While that federal habeas petition was pending, Matthews filed a second state postconviction relief action on November 29, 2018. Respondent’s Exhibit, ECF No. 8-7 at 11.

Matthews requested a stay of his federal habeas petition until the conclusion of his second postconviction relief action. Motion to Stay, *Matthews*, 4:17-cv-00386, ECF No. 50. The motion was denied. Order, *id.*, ECF No. 63. Matthews then voluntarily dismissed his § 2254 petition in July 2019. Notice of Voluntary Dismissal, *id.*, ECF No. 64. The dismissal stipulated that if Matthews wanted to pursue federal relief after exhausting his state court remedies, he would “follow proper procedures to pursue a second and successive petition for habeas corpus relief in this Court under 28 U.S.C. § 2244.” *Id.* at 2; *see also* Respondent’s Exhibit, ECF No. 8-6 at 2.

Matthews’s second postconviction relief action was denied as untimely by the state district court and

affirmed by the court of appeals. *See Matthews v. State*, No. 20-1317, 2022 Iowa App. LEXIS 278, at *3, 10 (Iowa Ct. App. March 30, 2022). The Iowa Supreme Court denied further review, and procedendo was issued June 20, 2022. Respondent's Exhibit, ECF No. 8-8 at 1.

Matthews initiated this second petition for federal habeas corpus relief pursuant to 28 U.S.C. § 2254 by placing his petition in the prison mail on June 30, 2022. ECF No. 1 at 17 (noting postmark).

II. DISCUSSION OF APPLICABLE LAW

A. Timeliness

A petitioner has a one-year period, known as a statute of limitations, to file a federal petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1); *see also Painter v. Iowa*, 247 F.3d 1255, 1256 (8th Cir. 2001). For purposes here, the one-year period runs from “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). No time counts against the petitioner while “a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending.” *Painter*, 247 F.3d at 1256 (quoting 28 U.S.C. § 2244(d)(2)).

As described above, the statute of limitations here began to run once Matthews concluded his first postconviction relief action, or October 10, 2017. Then Matthews had one year to file his claims for federal habeas review. The current petition was not filed until June 2022. Because it was filed more than one year

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after the conclusion of his first postconviction relief action, the petition is untimely.

Matthews argues his second § 2254 petition is timely, however, because the statute of limitations was tolled while both his first § 2254 petition and his second state postconviction relief action were pending. ECF No. 20-1 at 3–4. This argument is without merit.

First, “an application for federal habeas corpus review is not an ‘application for State post-conviction or other collateral review’ within the meaning of 28 U.S.C. § 2244(d)(2).” *Duncan v. Walker*, 533 U.S. 167, 181 (2001). The Supreme Court held the word “State” modifies the entire phrase—“post-conviction or other collateral review,” not only postconviction review. *Id.* at 172–75. Reading the statute in this way supports the purpose of the statute’s exhaustion requirement, that is, to give state courts a full and fair opportunity to resolve federal constitutional claims before presenting them to federal courts. *Id.* at 178–80. Thus, the limitation period of § 2244(d) is not tolled during a previously filed federal habeas petition. *Id.* at 181; *see also White v. Dingle*, 616 F.3d 844, 846 (8th Cir. 2010) (same).

The Court also rejects Matthews’s second argument—that the statute of limitations was tolled during his second state postconviction relief action. ECF No. 20-1 at 4. His second application for postconviction relief was denied by the state courts as untimely. *See Matthews*, 2022 Iowa App. LEXIS 278, at *9–10 (affirming district court’s decision that second application for postconviction relief was not “promptly” filed after the conclusion of the first proceeding, and

was therefore, time-barred). Because the postconviction petition was untimely, it was not “properly filed,” and does not toll the § 2244(d) statute of limitations. *Pace v. DiGuglielmo*, 544 U.S. 408, 413 (2005). The Supreme Court explained,

[i]n common understanding, a petition filed after a time limit, and which does not fit within any exceptions to that limit, is no more “properly filed” than a petition filed after a time limit that permits no exception. The purpose of AEDPA’s statute of limitations confirms this commonsense reading. On petitioner’s theory, a state prisoner could toll the statute of limitations at will simply by filing untimely state postconviction petitions. This would turn § 2244(d)(2) into a de facto extension mechanism, quite contrary to the purpose of AEDPA, and open the door to abusive delay.

Id.; see also *Nelson v. Norris*, 618 F.3d 886, 892 (8th Cir. 2010) (“if a state court finds that a motion fails to comply with filing requirements, that motion is not ‘properly filed,’ regardless of whether those filing requirements are firmly established and regularly followed.”).

Matthews’s second state postconviction relief action was found untimely, and therefore, was not “properly filed” within the meaning of § 2244(d)(2). As such, his second postconviction relief action did not toll the statute of limitations for purposes of the instant § 2254 petition.

An untimely petition may be entitled to equitable tolling if the petitioner is able to show he pursued his rights diligently and some extraordinary circumstance prevented his timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010) (recognizing equitable tolling available only in extraordinary circumstances). Matthews does not argue he is entitled to equitable tolling, and the Court finds no basis for equitable tolling on this record.

B. Deferential Review under 28 U.S.C. § 2254(d)

Finally, Matthews argues 28 U.S.C. § 2254(d) does not apply to his claims. ECF No. 20-1 at 4. Where a state prisoner challenges his or her state conviction, the application for a writ of habeas corpus cannot be granted “unless the adjudication of the claim—“(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).

Matthews argues the state court did not assess the merits of Matthews’s defective jury instruction claim, “and thus the [Antiterrorism and Effective Death Penalty Act of 1996] does not apply.” ECF No. 20-1 at 4–5. In support of his argument, Matthews cites to *Newton v. Million*, 349 F.3d 873 (6th Cir. 2003). In *Newton*, the United States Court of Appeals for the Sixth Circuit conducted de novo review of the claims because the state court did not assess the merits of a

claim properly raised in a habeas petition. *Id.* at 878. Similarly in this circuit, claims not decided on the merits are not entitled to deferential review. *Brende v. Young*, 907 F.3d 1080, 1086 (8th Cir. 2018) (applying deferential standard only to “the record that was before the state court that adjudicated the claim on the merits.”) (quoting *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)).

This argument does not save Matthews’s claims. The appropriate standard of review is relevant only when a particular claim is properly before the Court. Matthews’s federal claims expired under the statute of limitations imposed pursuant to 28 U.S.C. § 2244(d) and cannot be properly raised in this federal habeas petition.

III. CONCLUSION

This federal habeas petition is untimely, and Matthews has shown no basis for equitable tolling of the statute of limitations. The Court grants Respondent’s Motion to Dismiss the petition as untimely.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States Courts, the district court must issue or deny a certificate of appealability when it enters a final order adverse to the petitioner. District courts have the authority to issue certificates of appealability under 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b). “A certificate of appealability may issue under [this section] only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Matthews

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has not made a substantial showing of the denial of a constitutional right, therefore a certificate of appealability must be denied. Matthews may request issuance of a certificate of appealability by a judge on the Eighth Circuit Court of Appeals. *See* Fed. R. App. P. 22(b).

IT IS SO ORDERED that Respondent Chris Trip's Motion to Dismiss, ECF No. 8, is **GRANTED**. This case is dismissed.

Dated this 11th day of April, 2023.

/s/ James E. Gritzner
JAMES E. GRITZNER, Senior Judge
U.S. DISTRICT COURT

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APPENDIX C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

CIVIL NUMBER: 4:22-cv-00220-JEG

[Filed April 12, 2023]

Micah Sherif Matthews)
Petitioner,)
)
v.)
)
Chris Trip)
Respondent.)

JUDGMENT IN A CIVIL CASE

☒ **DECISION BY COURT.** This action came before the Court. The matter has been fully submitted and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Defendant's Motion to Dismiss is Granted. Judgment is entered in favor of respondent against petitioner. Case closed. The certificate of appealability is denied.

Date: April 12, 2023

CLERK, U.S. DISTRICT COURT

/s/ B.German

By: Deputy Clerk

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APPENDIX D

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-1877

[Filed June 28, 2023]

Micah Sherif Matthews)
Appellant)
)
v.)
)
Chris Tripp)
Appellee)

Appeal from U.S. District Court for the
Southern District of Iowa - Central
(4:22-cv-00220-JEG)

ORDER

The petition for rehearing by the panel is denied.

June 28, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans