NO: _____

THE SUPREME COURT OF THE UNITED STATES

Term of the Court: October, 2023-2024

ALTON D. PELICHET
Petitioner,

-vs-

FREDEANE ARTIS
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION APPENDIX

By: ALTON D. PELICHET #148688
Petitioner, In Forma Pauperis
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, Michigan 48446

NO: _____

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Appendix A

No. 23-1815

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ALTON PELICHET,

Petitioner-Appellant,

v.

FREDEANE ARTIS, Warden,

Respondent-Appellee.

ORDER

Before: CLAY, Circuit Judge.

Alton Pelichet, a Michigan prisoner proceeding pro se, appeals the district court's judgment dismissing his 28 U.S.C. § 2254 habeas corpus petition. Pelichet has filed an application for a certificate of appealability ("COA"). Because reasonable jurists could not debate the district court's conclusion that Pelichet did not make a showing of actual innocence sufficient to overcome the untimeliness of his habeas petition, a COA will not issue.

In 1977, following a bench trial, a judge found Pelichet guilty of first-degree murder, armed robbery, assault with intent to rob while armed, and possession of a firearm during the commission of a felony. The trial court sentenced him to life imprisonment for the murder, 10 to 15 years of imprisonment for the armed robbery, 10 to 15 years of imprisonment for the assault, and two years of imprisonment for the felony firearm conviction. The Michigan Court of Appeals set aside Pelichet's felony firearm conviction but otherwise affirmed. In 1981, the Michigan Supreme Court reinstated the felony firearm conviction and otherwise denied leave to appeal. Pelichet first sought post-conviction relief in 2006, but the state courts denied his requests for relief.

In June 2023, Pelichet filed a § 2254 habeas petition raising three grounds for relief: (1) the Wayne County Circuit Court applied an improper legal standard and made erroneous factual findings when it denied a 2021 motion for relief from judgment; (2) he is actually innocent of first-

degree murder because the trial judge misinterpreted Michigan law and did not believe that he had to find beyond a reasonable doubt that Pelichet acted with malice; and (3) his trial and appellate attorneys performed ineffectively by failing to object to the trial judge's interpretation of Michigan's murder statute and by failing to challenge that interpretation on appeal.

The district court ordered Pelichet "to show cause why the case should not be dismissed for failure to comply with the one-year statute of limitations applicable to federal habeas actions." Order to Show Cause, R. 3, Page ID #70. Pelichet conceded that his habeas petition was untimely but argued that the district court should nevertheless consider the merits of his claims because he "is actually innocent of the charge that he has been found guilty of, i.e. first degree 'felony' murder." Pet'r's Response, R. 4, Page ID #75. In support of that argument, he cited *People v. Aaron*, 299 N.W.2d 304 (Mich. 1980), as new, reliable evidence of his actual innocence, contending that the Michigan Supreme Court held in *Aaron* "that the first degree murder statute of Michigan has never allowed the mental element of first degree murder to be satisfied by proof of the intent to commit the underlying offense." *Id.* at Page ID #77. The district court concluded that Pelichet's "untimely petition cannot be saved by statutory or equitable tolling" and that "Pelichet has not presented any new reliable evidence of his factual innocence of the crime of murder." Order, R. 5, Page ID #87, 93. It therefore dismissed his petition as untimely.

Pelichet now argues that the district court erred in rejecting his actual-innocence argument and concluding that it does not provide a basis for reviewing his untimely claims. Pelichet does not challenge the district court's rulings that his motion is untimely and that he is not entitled to statutory or equitable tolling. Thus, the only issue on appeal is whether Pelichet made a showing of actual innocence that would allow the district court to overlook the untimeliness of his habeas petition.

A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because the district court dismissed Pelichet's petition on procedural grounds, Pelichet must show "at least, that jurists of reason would find it debatable whether the 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).

"A petitioner can . . . escape the procedural bar of the statute of limitations if he presents new evidence and shows that 'it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.'" *Wlodarz v. Parris*, No. 23-5433, 2023 WL 7413743, at *2 (6th Cir. Nov. 2, 2023) (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013)). However, Pelichet did not introduce any new *evidence* establishing his actual innocence. But, as he points out, this Court has acknowledged in the context of a 28 U.S.C. § 2255 motion filed by a federal prisoner that the actual-innocence exception may be satisfied if a movant shows:

> (1) the existence of a new interpretation of statutory law, (2) which was issued after the petitioner had a meaningful time to incorporate the new interpretation into his direct appeal or subsequent motions, (3) is retroactive, and (4) applies to the merits of the petition to make it more likely than not that no reasonable juror would have convicted him.

Phillips v. United States, 734 F.3d 573, 582 (6th Cir. 2013) (quoting *Wooten v. Cauley*, 677 F.3d 303, 307-08 (6th Cir. 2012)); *see also Penney v. United States*, 870 F.3d 459, 463 (6th Cir. 2017).

Even applying the *Phillips* standard, Pelichet cannot satisfy the actual-innocence exception because *Aaron* does not satisfy all of the above requirements. In *Aaron*, the Michigan Supreme Court acknowledged that the "common-law doctrine" of felony murder had previously prevailed in Michigan but "conclude[d] that the [doctrine] should be abolished." *Aaron*, 299 N.W.2d at 323-24. But *Aaron* was decided while Pelichet's direct appeal was pending and Pelichet, therefore, "had a meaningful time to incorporate [it] into his direct appeal[] or subsequent motions." *Phillips*, 734 F.3d at 582. Pelichet contends that it would have been futile to raise *Aaron* on direct appeal because the Michigan Supreme Court expressly stated that its decision applied only "to all trials in progress and those occurring after the date of this opinion." *Aaron*, 299 N.W.2d at 329. However, that statement prevents *Aaron* from satisfying the third element of the *Phillips* standard, because it rendered *Aaron* nonretroactive. *See Phillips*, 734 F.3d at 582. Reasonable jurists therefore could not debate the district court's ruling that Pelichet failed to make a showing of actual innocence sufficient to overcome the time-bar.

For the foregoing reasons, we **DENY** Pelichet's application for a COA.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1815

ALTON PELICHET,

Petitioner-Appellant,

v.

FREDEANE ARTIS, Warden,

Respondent-Appellee.

Before: CLAY, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Alton Pelichet for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALTON D. PELICHET,

Petitioner,

v.

FREDEANE ARTIS,

Respondent.
_____/

Case Number 23-11402
Honorable David M. Lawson

OPINION AND ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

On June 8, 2023, petitioner Alton D. Pelichet, a Michigan prisoner, filed a petition without the assistance of an attorney seeking a writ of habeas corpus under 28 U.S.C. § 2254. Pelichet challenges his 1977 convictions for first-degree felony murder and possession of a firearm during the commission of a felony rendered by a judge sitting without a jury in the Wayne County, Michigan circuit court. Pelichet was sentenced to life in prison without parole plus two years. He raises claims challenging the trial court's denial of his second motion for relief from judgment, the validity of the trial court's guilty verdict, and the effectiveness of his trial and appellate counsel. On June 20, 2023, the Court ordered Pelichet to show cause why his habeas corpus petition should not be dismissed as untimely under the one-year statute of limitations applicable to federal habeas actions. Pelichet filed a response to the Court's show cause order in which he conceded that his petition was untimely and argued that the untimely filing should be excused by the application of equitable tolling and due to his actual innocence. However, for the reasons discussed below, the untimely petition cannot be saved by statutory or equitable tolling, and that it must be dismissed.

> (2) 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.

28 U.S.C. § 2244(d). A habeas petition filed outside the prescribed time period must be dismissed. *Isham v. Randle*, 226 F.3d 691, 694 695 (6th Cir. 2000) (dismissing case filed 13 days late); *see also Wilson v. Birkett*, 192 F. Supp. 2d 763, 765 (E.D. Mich. 2002). Federal district courts are authorized to consider on their own motion the timeliness of a state prisoner's federal habeas petition. *Day v. McDonough*, 547 U.S. 198, 209 (2006).

Pelichet did not comply with the one-year time limit for filing a habeas corpus petition. His convictions became final in 1981 — before the AEDPA's April 24, 1996 effective date. Prisoners whose convictions became final before the AEDPA's effective date were given a one-year grace period in which to file their federal habeas petitions. *Jurado v. Burt*, 337 F.3d 638, 640 (6th Cir. 2003). Therefore, Pelichet was required to file his federal habeas petition on or before April 24, 1997, unless time could be excluded from that calculation during which a properly filed application for state post-conviction or state collateral review was pending in accordance with 28 U.S.C. § 2244(d)(2).

The record indicates that Pelichet filed his motions for collateral review in the state trial court in 2006 and 2021, more than nine years and 24 years respectively after the one-year grace period expired. A state court post-conviction motion that is filed after the expiration of the limitations period cannot toll that period because there is no period remaining to be tolled. *Hargrove v. Brigano*, 300 F.3d 717, 718 n. 1 (6th Cir. 2002); *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000); *see also Jurado*, 337 F.3d at 641. The AEDPA's limitations period does not begin to run anew after the completion of state post-conviction proceedings. *Searcy v. Carter*, 246 F.3d 515, 519 (6th Cir. 2001). Pelichet did not date his federal habeas petition until June 8, 2023, more than 26 years after the one-year grace period expired.

statute of limitations for a period of time, all have been held not to warrant tolling. *See Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 464 (6th Cir. 2012) (holding that a petitioner's *pro se* status is not an extraordinary circumstance); *Allen*, 366 F.3d at 403 (holding that ignorance of the law does not justify tolling); *see also Rodriguez v. Elo*, 195 F. Supp. 2d 934, 936 (E.D. Mich. 2002) (observing that the law is "replete with instances which firmly establish that ignorance of the law, despite a litigant's *pro se* status, is no excuse" for failure to follow legal requirements); *Holloway v. Jones*, 166 F. Supp. 2d 1185, 1189 (E.D. Mich. 2001) (holding that lack of legal assistance does not justify tolling); *Sperling v. White*, 30 F. Supp. 2d 1246, 1254 (C.D. Cal. 1998) (collecting cases holding that ignorance of the law, illiteracy, and lack of legal assistance do not justify tolling).

Pelichet also has not demonstrated that he acted diligently to protect his rights. His direct appeal concluded in 1981, and he did not seek collateral review of his convictions in the state courts until 2006 and then again in 2021. For this additional reason, he is not entitled to equitable tolling under the rule recognized in *Holland*.

In his response to the order to show cause, Pelichet argues that his untimely petition should be allowed to proceed because he is actually innocent of felony murder. He cites the Michigan Supreme Court's decision in *People v. Aaron*, 409 Mich. 672, 299 N.W.2d 304 (1980), where the court held that "[a]defendant who only intends to commit the [underlying] felony does not intend to commit the harm that results and may or may not be guilty of perpetrating an act done in wanton or willful disregard of the plain and strong likelihood that such harm will result." 409 Mich. at 728, 299 N.W.2d at 326. The Michigan Supreme Court explained in that case that "[a]lthough the circumstances surrounding the commission of the felony may evidence a greater intent beyond the intent to commit the felony, or a wanton and willful act in disregard of the possible consequence

keeping with the Supreme Court, the Sixth Circuit has stated that the actual innocence exception should "remain rare" and "only be applied in the 'extraordinary case.'" *Souter*, 395 F.3d at 590 (quoting *Schlup*, 513 U.S. at 321).

Pelichet has not presented any new reliable evidence of his factual innocence of the crime of murder. In fact, he presents no "evidence" at all, since he has not identified any new testimony, physical evidence, or scientific analysis calling his guilt into question. Instead, he argues that subsequent development of the case law by the state courts rendered the proofs relied upon at his trial legally insufficient to prove the crime of murder. But the Michigan Supreme Court's decision in *Aaron* was issued during the pendency of the petitioner's direct appeal, and the subsequent authority therefore was available for him to raise both during the pendency of that appeal and in his petitions for collateral review in the state courts.

As Pelichet notes in his response to the Court's show cause order, the Sixth Circuit has held, in the context of motions brought under 28 U.S.C. §§ 2241 and 2255, that a petitioner may establish factual innocence by showing "an intervening change in the law that establishes [his] actual innocence." *Phillips v. United State*, 734 F.3d 573, 582 (6th Cir. 2013) (citing *United States v. Peterman*, 249 F.3d 458, 462 (6th Cir.2001)). To do so, a petitioner must show: "(1) the existence of a new interpretation of statutory law, (2) which was issued after the petitioner had a meaningful time to incorporate the new interpretation into his direct appeals or subsequent motions, (3) is retroactive, and (4) applies to the merits of the petition to make it more likely than not that no reasonable juror would have convicted him." *Ibid.* (citing *Wooten v. Cauley*, 677 F.3d 303, 307-308 (6th Cir. 2012)).

However, even if the Court assumes that the same standard applies in the context of a petition for review of a state court conviction under section 2254, Pelichet has failed to meet the

Appendix C

No. 23-1815

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 22, 2024
KELLY L. STEPHENS, Clerk

ALTON PELICHET,

Petitioner-Appellant,

v.

FREDEANE ARTIS, WARDEN,

Respondent-Appellee.

ORDER

Before: SUHRHEINRICH, MOORE, and GILMAN, Circuit Judges.

Alton Pelichet petitions for rehearing en banc of this court's order entered on February 6, 2024, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court,* none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

*Judges Griffin and Davis recused themselves from participation in this ruling.

No. 23-1815

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 6, 2024
KELLY L. STEPHENS, Clerk

ALTON PELICHET,

Petitioner-Appellant,

v.

FREDEANE ARTIS, WARDEN,

Respondent-Appellee.

ORDER

Before: SUHRHEINRICH, MOORE, and GILMAN, Circuit Judges.

Alton Pelichet, a Michigan prisoner, petitions the court to rehear en banc its order denying his application for a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk