

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM H. BAKER,
Petitioner,

vs.

ANGELA HUNSINGER-STUFF, Warden,
Respondent.

APPLICATION TO SUPREME COURT JUSTICE FOR AN EXTENSION
OF TIME TO FILE A WRIT OF CERTIORARI IN THE SUPREME
COURT OF THE UNITED STATES.

NOW COMES, Pro Se.-Petitioner William H. Baker, pursuant to U.S. Sup. Ct. R. 13.5; R. 22; and R. 30 and ask this Court to extend the time for Petitioner to file his Writ of Certiorari in this Court by sixty(60) days and states the following colloquy in support thereof.

On November 27, 2023 the United States Court of Appeals for the Sixth Circuit denied Petitioner's timely Petition for Rehearing wherefore Petitioner's Writ of Certiorari is due in this Court on or before February 26, 2024.

Petitioner now states that Allen Correctional Institution enacted stricter movement procedures after its May 2023 prison escape which changed how access to the institutional library services is obtained. Petitioner is now required to request access to the law library, as well as, request any additional time to access the law library outside of normal usage.

In addition, due to a shortage of institutional staff and having only one librarian that covers both the Allen complex and Dakwood facility, library scheduling at Allen Correctional Inst. has been reduced to four(4) days per week of access for general population.

Based on the above colloquy Petitioner for good cause asks this Justice to extend this filing by sixty(60) days to allow adequate time for Petitioner to access the law library services in order to comprehensively prepare his Writ of Certiorari. Such will make Petitioner's Writ of Certiorari due in this Court on or before April 26, 2024.

Respectfully Submitted,

W. Baker

William H. Baker #740704
Allen Correctional Inst.
2338 N. West St.
Lima, OH 45801

Pro Se.-Petitioner

PROOF OF SERVICE

I certify that this Application was sent via first class mail to the Office of the Clerk, Supreme Court of the United States, Washington, D.C. 20543 and Senior Asst. Atty. Gen. Maura O'Neill Jaite (0058424), at 30 E. Broad Street, 23rd Fl., Columbus, OH 43215 on January 22, 2024 by depositing such in the U.S. mail receptacle at the Allen Correctional Institution.

W. Baker

William H. Baker #740704
Pro Se.-Petitioner

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM H. BAKER,
Petitioner,

vs.

ANGELA HUNSINGER-STUFF, Warden,
Respondent.

APPLICATION TO SUPREME COURT JUSTICE FOR AN EXTENSION
OF TIME TO FILE A WRIT OF CERTIORARI IN THE SUPREME
COURT OF THE UNITED STATES.

NOW COMES, Pro Se.-Petitioner William H. Baker, pursuant to U.S. Sup. Ct. R. 13.5; R. 22; and R. 30 and ask this Court to extend the time for Petitioner to file his Writ of Certiorari in this Court by sixty(60) days and states the following colloquy in support thereof.

On November 27, 2023 the United States Court of Appeals for the Sixth Circuit denied Petitioner's timely Petition for Rehearing wherefore Petitioner's Writ of Certiorari is due in this Court on or before February 26, 2024.

Petitioner now states that Allen Correctional Institution enacted stricter movement procedures after its May 2023 prison escape which changed how access to the institutional library services is obtained. Petitioner is now required to request access to the law library, as well as, request any additional time to access the law library outside of normal usage.

In addition, due to a shortage of institutional staff and having only one librarian that covers both the Allen complex and Oakwood facility, library scheduling at Allen Correctional Inst. has been reduced to four(4) days per week of access for general population.

Based on the above colloquy Petitioner for good cause asks this Justice to extend this filing by sixty(60) days to allow adequate time for Petitioner to access the law library services in order to comprehensively prepare his Writ of Certiorari. Such will make Petitioner's Writ of Certiorari due in this Court on or before April 26, 2024.

Respectfully Submitted,

W. Baker

William H. Baker #740704
Allen Correctional Inst.
2338 N. West St.
Lima, OH 45801

Pro Se.-Petitioner

PROOF OF SERVICE

I certify that this Application was sent via first class mail to the Office of the Clerk, Supreme Court of the United States, Washington, D.C. 20543 and Senior Asst. Atty. Gen. Maura O'Neill Jaite (0058424), at 30 E. Broad Street, 23rd Fl., Columbus, OH 43215 on January 22, 2024 by depositing such in the U.S. mail receptacle at the Allen Correctional Institution.

W. Baker

William H. Baker #740704
Pro Se.-Petitioner

No. 23-3273

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 1, 2023
DEBORAH S. HUNT, Clerk

WILLIAM H. BAKER,)
)
Petitioner-Appellant,)
)
v.)
)
ANGELA HUNSINGER-STUFF, Warden,)
)
Respondent-Appellee.)

ORDER

Before: DAVIS, Circuit Judge.

William H. Baker, a pro se Ohio prisoner, appeals the district court’s judgment dismissing his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. This court construes Baker’s notice of appeal as an application for a certificate of appealability. *See* Fed. R. App. P. 22(b)(2). Baker moves this court for leave to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5).

In 2017, a jury in the Allen County Court of Common Pleas convicted Baker of two counts each of rape, sexual battery, unlawful sexual conduct with a minor, and gross sexual imposition. After merging counts for sentencing purposes, the trial court sentenced Baker to consecutive terms of nine years for each rape count and 12 months for each gross-sexual-imposition count, for a total of 20 years of imprisonment. On direct appeal, Baker asserted (1) that his convictions were against the manifest weight of the evidence and (2) that he received ineffective assistance of counsel. The Ohio Court of Appeals affirmed. *State v. Baker*, No. 1-17-61, 2018 WL 4057035 (Ohio Ct. App. Aug. 27, 2018).

Baker filed a § 2254 habeas petition in May 2019. *Baker v. Turner*, No. 3:19-cv-1247 (N.D. Ohio May 31, 2019). A month later, the district court dismissed Baker’s habeas petition

No. 23-3273

- 2 -

without prejudice because he had not exhausted his claims by presenting them to the Ohio Supreme Court.

In August 2019, Baker returned to the state courts, filing a motion to correct and modify his sentence, which the trial court denied the same day. Baker then filed a delayed motion to reopen his direct appeal under Ohio Rule of Appellate Procedure 26(B). The Ohio Court of Appeals denied Baker's Rule 26(B) motion, concluding that his motion was untimely, that he had failed to show good cause for his untimely filing, and that his claims of ineffective assistance of appellate counsel raised in his motion lacked merit. In January 2020, Baker filed a notice of appeal from the August 27, 2018, decision of the Ohio Court of Appeals and a motion for a delayed appeal, which the Ohio Supreme Court denied in March 2020.

Baker filed another § 2254 habeas petition in October 2020. He raised two grounds for relief: (1) insufficient evidence and (2) ineffective assistance of counsel. A magistrate judge recommended that Baker's habeas petition be dismissed as untimely and procedurally defaulted. Over Baker's objections, the district court adopted the magistrate judge's report and recommendation, dismissed the habeas petition, and declined to issue a certificate of appealability. This timely appeal followed.

Baker must obtain a certificate of appealability to appeal the district court's judgment dismissing his habeas petition. *See* 28 U.S.C. § 2253(c)(1)(A). To obtain a certificate of appealability, Baker must make "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). Where the district court dismisses a habeas petition on procedural grounds, as here, a certificate of appealability should issue if the petitioner "shows, 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).

The Antiterrorism and Effective Death Penalty Act (AEDPA) establishes a one-year statute of limitations for habeas petitions challenging state-court judgments. 28 U.S.C. § 2244(d)(1). The one-year limitations period typically runs from "the date on which the judgment became final by

No. 23-3273

- 3 -

the conclusion of direct review or the expiration of the time for seeking such review.” *Id.* § 2244(d)(1)(A). The limitations period is 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.” *Id.* § 2244(d)(2).

Baker’s judgment became final on October 11, 2018, upon the expiration of the 45-day period for filing an appeal to the Ohio Supreme Court. *See* Ohio S. Ct. Prac. R. 7.01(A)(1)(a)(i). Baker’s first § 2254 habeas petition did not toll the limitations period. *See Duncan v. Walker*, 533 U.S. 167, 181-82 (2001). Baker’s motion to correct and modify his sentence, filed on August 20, 2019, and denied the same day, stopped the clock. The district court tolled the limitations period until September 20, 2019, upon the expiration of the 30-day period for filing an appeal to the Ohio Court of Appeals. *See* Ohio R. App. P. 4(A)(1). This tolling might have been overly generous. *See Scarber v. Palmer*, 808 F.3d 1093, 1095-97 (6th Cir. 2015) (applying statutory tolling only while a state post-conviction petition is “pending”). But even with the extra 30 days of tolling, the limitations period expired in November 2019. Baker’s Rule 26(B) motion, filed in October 2019, did not toll the limitations period because it was denied as untimely and therefore was not “properly filed” for purposes of § 2244(d)(2). *See Pace v. DiGuglielmo*, 544 U.S. 408, 414 (2005). And Baker’s motion for a delayed appeal, filed in January 2020, did not revive the already expired limitations period. *See Vroman v. Brigano*, 346 F.3d 598, 602 (6th Cir. 2003). Baker filed his habeas petition in October 2020, at least 11 months too late.

AEDPA’s limitations period “is subject to equitable tolling in appropriate cases.” *Holland v. Florida*, 560 U.S. 631, 645 (2010). “Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.” *Pace*, 544 U.S. at 418. Baker asserted that he was entitled to equitable tolling because his appellate counsel never notified him of the August 27, 2018, decision of the Ohio Court of Appeals on direct appeal. But Baker contacted the clerk of courts on May 1, 2019, and received a response and a copy of the Ohio appellate court’s judgment on May 13, 2019. If the one-year limitations period began the next day, May 14, 2019,

No. 23-3273

- 4 -

Baker's habeas petition would still be time-barred. Even with the district court's overly generous tolling for Baker's August 2019 motion to correct and modify his sentence and tolling for his January 2020 motion for a delayed appeal, the limitations period would have expired in August 2020, and his habeas petition, filed in October 2020, would still be late. And Baker's lack of legal knowledge is insufficient to warrant equitable tolling. See *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 751-52 (6th Cir. 2011); *Allen v. Yukins*, 366 F.3d 396, 403 (6th Cir. 2004).

A credible claim of actual innocence may overcome AEDPA's one-year limitations period. *McQuiggin v. Perkins*, 569 U.S. 383, 386, 392 (2013). Such a claim "requires petitioner to support his allegations of constitutional error with *new reliable evidence*—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Schlup v. Delo*, 513 U.S. 298, 324 (1995) (emphasis added). Baker cited trial testimony in support of his actual innocence claim, which does not satisfy this standard.

Reasonable jurists could not debate the district court's conclusion that Baker's habeas petition was untimely. Accordingly, this court **DENIES** a certificate of appealability and **DENIES** as moot Baker's motion for leave to proceed in forma pauperis on appeal.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 09/01/2023.

Case Name: William Baker v. Angela Hunsinger-Stuff

Case Number: 23-3273

Docket Text:

ORDER filed: This court DENIES a certificate of appealability and DENIES as moot Baker's motion for leave to proceed in forma pauperis on appeal. Stephanie Dawkins Davis, Circuit Judge.

The following document(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Mr. William H. Baker
Allen-Oakwood Correctional Facility
P.O. Box 4501
Lima, OH 45802

A copy of this notice will be issued to:

Ms. Maura O'Neill Jaite
Ms. Sandy Opacich

No. 23-3273

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 27, 2023
KELLY L. STEPHENS, Clerk

WILLIAM H. BAKER,)
)
 Petitioner-Appellant,)
)
 v.)
)
 ANGELA HUNSINGER-STUFF, Warden,)
)
 Respondent-Appellee.)

ORDER

Before: SILER, THAPAR, and READLER, Circuit Judges.

William H. Baker, a pro se Ohio prisoner, petitions for rehearing of this court's September 1, 2023, order denying him a certificate of appealability. This court construed Baker's notice of appeal as an application for a certificate of appealability. Baker asserts that he submitted a request for a certificate of appealability but that this court issued its ruling before receiving his request. We have reviewed Baker's request for a certificate of appealability and conclude that this court did not overlook or misapprehend any point of law or fact in denying him a certificate of appealability. *See* Fed. R. App. P. 40(a)(2).

Accordingly, the petition for rehearing is **DENIED**.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 11/27/2023.

Case Name: William Baker v. Angela Hunsinger-Stuff

Case Number: 23-3273

Docket Text:

ORDER filed: The petition for rehearing is DENIED. Eugene E. Siler, Jr., Circuit Judge; Amul R. Thapar, Circuit Judge and Chad A. Readler, Circuit Judge.

The following document(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Mr. William H. Baker
Allen-Oakwood Correctional Facility
P.O. Box 4501
Lima, OH 45802

A copy of this notice will be issued to:

Ms. Maura O'Neill Jaite