

APPENDIX

A

No. 23-5945

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

May 21, 2024

KELLY L. STEPHENS, Clerk

ROBERT CASTLE,

Petitioner-Appellant,

v.

DANIEL AKERS, Warden,

Respondent-Appellee.

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O R D E R

Before: GRIFFIN, Circuit Judge.

Robert Castle, a pro se Kentucky prisoner, appeals a district court judgment dismissing as untimely his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254 and moves this court for a certificate of appealability (COA). Because reasonable jurists would agree that Castle's petition is time-barred and that he has not shown entitlement to equitable tolling, the court denies a COA.

In September 2017, Castle pleaded guilty to six counts of sexual abuse and ten counts of sodomy. Approximately three months later, Castle was sentenced to 20 years in prison. He did not appeal.

On August 28, 2019, Castle moved the trial court to compel his attorney to produce his case file. According to Castle, the trial court granted the motion and he received his attorney's case file on November 16, 2019.

On July 27, 2020, Castle moved for post-conviction relief in the trial court, arguing that he learned through his recently obtained case file that, in February 2017, the Commonwealth had offered a plea deal pursuant to which he would have received only a 15-year sentence. After a hearing, the trial court denied the motion, reasoning that trial counsel was not ineffective in failing to convey the plea offer because the offer was "invalid on its face," as its 15-year sentence was

Appendix A

inconsistent with the charges to which Castle would be pleading guilty. The Kentucky Court of Appeals affirmed, and, on September 14, 2022, the Kentucky Supreme Court denied Castle's motion for discretionary review.

On January 10, 2023, at the earliest, Castle filed his § 2254 petition by placing it in the prison mail, raising the same ineffective-assistance-of-trial-counsel claim that he raised in his motion for post-conviction relief.

A magistrate judge issued a report and recommendation (R. & R.), recommending that the petition be dismissed as untimely. The district court agreed, adopted the R. & R., and dismissed Castle's petition. Thereafter, the district court denied Castle's motion for an extension of time to file objections and to vacate the judgment; in doing so, the district court indicated that it had reviewed Castle's belated objections and determined that they did not alter its conclusion, made after a de novo review of the magistrate judge's R. & R., that his petition was untimely.

A COA may be granted "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 327, 336 (2003). When the district court's denial of relief is based on a procedural ruling, the petitioner must demonstrate 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 of 1996 (AEDPA) imposes a one-year limitations period for filing a federal habeas corpus petition that begins to run from the latest of four circumstances, one of which is "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2244(d)(1)(D). The limitations period is tolled while "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).

Reasonable jurists would agree that, under § 2244(d)(1)(D), the one-year limitations period began to run on November 17, 2019, the day after Castle received his case file, which contains the factual predicate for his ineffective-assistance claim in his petition. The district court determined that the limitations period was tolled beginning 254 days later, on July 27, 2020, when Castle filed a motion for post-conviction relief in the trial court. *See* 28 U.S.C. § 2244(d)(2). Castle disagrees, arguing that the limitations period was tolled at least 14 days earlier; he explains that he submitted his motion for post-conviction relief to prison officials for mailing on July 9, 2020, and that delivery within three business days should be presumed. The district court rejected this argument on the ground that, although Kentucky recognizes a prison mailbox rule, it applies only to notices of appeal—not post-conviction motions like the one that Castle filed—and thus concluded that Castle’s post-conviction motion was not “properly filed” until July 27, 2020, when it was marked as filed and entered on the trial court’s docket. No reasonable jurist could disagree. *See* Ky. R. Crim. P. 12.04(5); *Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (holding that “[a]n application is ‘filed,’ as that term is commonly understood, when it is delivered to, *and accepted by*, the appropriate court officer for placement into the official record” and that “an application is ‘properly filed’ when its delivery and acceptance are in compliance with the applicable laws and rules governing filings” (first emphasis added)); *Hall v. Warden, Lebanon Corr. Inst.*, 662 F.3d 745, 753 (6th Cir. 2011) (holding that the federal prison mailbox rule does not apply to state filings). Nor could reasonable jurists disagree that the limitations period again began to run on September 15, 2022, the day after the Kentucky Supreme Court denied Castle’s motion for discretionary review. *See* 28 U.S.C. § 2244(d)(2); Ky. R. Civ. P. 76.30(2)(a). The limitations period expired 111 days later, on January 4, 2023. Castle did not file his § 2254 petition until January 10, 2023. Reasonable jurists therefore could not debate the district court’s conclusion that Castle’s habeas petition is time-barred.

The one-year statute of limitations set forth in § 2244(d) “is subject to equitable tolling in appropriate cases.” *Holland v. Florida*, 560 U.S. 631, 645 (2010). “[A] ‘petitioner’ is ‘entitled to equitable tolling’ only if he shows ‘(1) that he has been pursuing his rights diligently, *and* (2) that

some extraordinary circumstance stood in his way' and prevented timely filing." *Id.* at 649 (emphasis added) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)).

Castle argues that he is entitled to equitable tolling because he diligently pursued his rights by filing a motion to compel the production of his case file and a timely motion for post-conviction relief, and by filing his § 2254 petition less than four months after the Kentucky Supreme Court denied his motion for discretionary review of the trial court's denial of his motion for post-conviction relief. He further argues that the trial court clerk's delay in docketing his motion for post-conviction relief is a "circumstance[] beyond his control" that entitles him to equitable tolling.

The district court determined that Castle arguably satisfied the second equitable-tolling prong because, although he mailed his motion for post-conviction relief to the trial court on July 9, 2020, the trial court clerk did not file it until July 27, 2020. But for the "extraordinary circumstance" of the trial court's failure to promptly file his post-conviction motion, his § 2254 would be considered timely. However, the district court determined that Castle failed to satisfy the first equitable-tolling prong. *See Hall*, 662 F.3d 745 at 749 (reiterating that a petition is entitled to equitable tolling only if *both* requirements are met). It explained that Castle waited over 600 days after sentencing, without explanation, to move to compel the production of his case file, waited another 254 days after that to file his motion for post-conviction relief, and then waited another four months after the resolution of that motion to become final in the state courts before filing his habeas corpus petition. Reasonable jurists would agree that "[t]he substantial breaks in time between Castle seeking various remedies is not demonstrative of diligence for purposes of equitable tolling."

Finally, reasonable jurists would agree that Castle's alleged mental incompetence did not warrant equitable tolling. "To obtain equitable tolling of AEDPA's statute of limitations on the basis of mental incompetence, a petitioner must demonstrate that (1) he is mentally incompetent and (2) his mental incompetence caused his failure to comply with AEDPA's statute of limitations." *Ata v. Scutt*, 662 F.3d 736, 742 (6th Cir. 2011).

Although Castle provided evidence to support his claim that he has a “low IQ and diminished logical reasoning skills” and “would qualify for a diagnosis of Intellectual Disability (formerly term ‘Mental Retardation’),” he has not shown a causal link between such mental deficiencies and his untimely filing. Nor could he. Castle demonstrated his ability to pursue his legal rights during the limitations period through the filing of a motion to compel, a motion for post-conviction relief, and an appeal of the denial of the latter motion. Castle thus has not shown that his mental deficiencies and intellectual-disability diagnosis “actually prevent[ed] [him] from pursuing his legal rights during the limitations period.” *Ramirez-Matias v. Lynch*, 631 F. App’x 339, 343-44 (6th Cir. 2015) (quoting *Price v. Lewis*, 119 F. App’x 725, 726 (6th Cir. 2005)). And as for Castle’s argument that he lacked legal resources and aid and is “unable to comprehend legal material,” “pro se status and lack of knowledge of the law are not sufficient to constitute an extraordinary circumstance and to excuse his late filing.” *Keeling v. Warden, Lebanon Corr. Inst.*, 673 F.3d 452, 464 (6th Cir. 2012). No reasonable jurist therefore could disagree with the district court’s conclusion that Castle is not entitled to equitable tolling.

The court therefore **DENIES** the motion for a COA.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens
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 05/21/2024.

Case Name: Robert Castle v. Daniel Akers

Case Number: 23-5945

Docket Text:

ORDER filed: The court therefore DENIES the motion for a certificate of appealability. Richard Allen Griffin, Circuit Judge.

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

Document Description: Order

Notice will be sent to:

Mr. Robert Castle
Lee Adjustment Center
168 Lee Adjustment Center Drive
Beattyville, KY 41311

A copy of this notice will be issued to:

Mr. Robert R. Carr
Ms. Jenny Lynn Sanders

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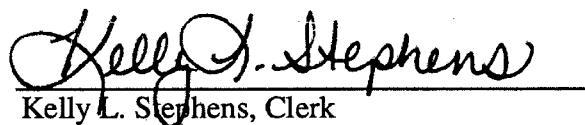
JUDGMENT

THIS MATTER came before the court upon the application by Robert Castle 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, Clerk

APPENDIX

B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
(at Pikeville)

ROBERT CASTLE,)	
)	
Petitioner,)	Civil Action No. 7: 23-004-DCR
)	
V.)	
)	
DANIEL AKERS, Warden,)	MEMORANDUM OPINION
)	AND ORDER
Respondent.)	

*** * *** *** *

Robert Castle has filed a petition for a writ of habeas corpus, seeking to vacate his state court convictions for sexual abuse and sodomy, alleging ineffective assistance of trial counsel. [Record No. 1] But Respondent Warden Daniel Akers asserts that Castle's petition is untimely. The matter was referred to United States Magistrate Judge Matthew A. Stinnett for issuance of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). On August 18, 2023, United States Magistrate Judge Stinnett issued a Recommended Disposition, recommending that Castle's petition be denied as untimely. [Record No. 18]

While the Court must make a *de novo* determination of those portions of the magistrate judge's recommendations to which an objection is made, 28 U.S.C. § 636(b)(1)(C), “[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nevertheless, the undersigned has conducted a *de novo* review of the matter and agrees that Castle's petition should be dismissed as untimely.

I.

Castle pleaded guilty to multiple counts of sexual abuse and sodomy in the Johnson Circuit Court after the Commonwealth's attorney agreed to recommend a twenty-year sentence. [Record No. 12-7] The state court entered the judgment sentencing Castle to twenty years on December 18, 2017. [Record No. 12-10] On August 28, 2019, Castle filed a motion with that court seeking an order to compel his trial attorney, Garland Arnett, to produce his complete case file. [Record No. 12-11] Castle received his file on November 16, 2019. [Record No. 1-1]

After discovering that the file contained a fifteen-year plea offer from the Commonwealth (dated February 23, 2017), Castle sought post-conviction relief under Ky. R. Crim. P. 60.02(e), alleging ineffective assistance of counsel based on a claim that Arnett failed to inform him of the February 2017 plea offer. [Record No. 12-15] During an evidentiary hearing in Johnson Circuit Court, Arnett testified that he did not share the plea offer with Castle because he recognized a discrepancy with the charges and determined that the offer was invalid on its face. [Record No. 12-20] Arnett confirmed this suspicion when he contacted the Commonwealth attorney's office and was informed the plea offer contained a sentencing error. The Johnson Circuit Court accepted Arnett's version of the facts and denied Castle's request for post-conviction relief, concluding that Castle was not denied effective assistance of counsel. [Record No. 12-24]

Castle timely appealed the court's order. The Court of Appeals of Kentucky, however, affirmed the lower court's decision, finding that Castle could not demonstrate ineffective assistance of counsel through Arnett's non-delivery of a patently defective plea offer. [Record

No. 12-22] Castle moved for discretionary review of that decision by the Supreme Court of Kentucky, but review was denied on September 14, 2022. [Record No. 12-26]

II.

Before reaching the merits of Castle's claim, this Court must first determine whether the claim was filed within the one-year statute of limitations provided by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). This period begins to run from the latest of one 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;
- (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;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1)(A)–(D).

Castle argues that the limitations period began to run on November 16, 2019 (the date he received his case file containing the nondisclosed plea offer from February 2017). The state court record supports this assertion, and the respondent offers no evidence to the contrary. As such, this Court concludes that the statute of limitations for Castle's § 2254 petition commenced on November 16, 2019.

The statute of limitations was tolled when Castle filed his post-conviction motion in state court. Warden Akers asserts that July 27, 2020 (the date the motion was properly filed in state court), should be used in calculating the number of days that had run since discovery on

November 16, 2019. Castle contends that the Court should instead use July 13, 2020 (a date that reflects his signing of the motion, plus three days for mailing). In accordance with Sixth Circuit precedent, the Court considers Castle's post-conviction motion filed on July 27, 2020, because that is the day it was "properly filed" according to Kentucky law. *See Israfil v. Russell*, 276 F.3d 768, 771 (6th Cir. 2001); *see also Boulder v. Chandler*, Civil Action No. 5:21-CV-314-CHB, 2023 U.S. Dist. LEXIS 45219, at *5 (E.D. Ky. Mar. 17, 2023) (denying § 2254 as untimely because timeliness of post-conviction motion is governed by state statute) (citing *Vroman v. Brigano*, 346 F.3d 598, 603 (6th Cir. 2003)). Because this Court must defer to the date Kentucky courts recognize Castle's motion as being filed, the statute of limitations ran for 254 days between November 16, 2019, and July 27, 2020.

Once Castle's petition for discretionary review by the Kentucky Supreme Court was denied on September 14, 2022, the statute of limitations again began to run. *See Isham v. Randle*, 226 F.3d 691, 695 (6th Cir. 2000). And it ran for an additional 118 days until January 10, 2023, when Castle signed his § 2254 petition. Exclusive of the above tolled periods of time, Castle filed § 2254 petition 372 days **after** the statute of limitations began to run, or seven days beyond the limitations period.

Further, Castle is not entitled to equitable tolling under the circumstances presented. To be entitled to equitable tolling, Castle bears the burden of showing "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *see also McClendon v. Sherman*, 329 F.3d 490, 494 (6th Cir. 2003). The undersigned shares the magistrate judge's determination that Castle has not proved he was diligent in pursuing his rights for purposes of equitable tolling. The significant delay in seeking his case file, in addition to the 254-day delay in filing his state

post-conviction motion, leads this Court to conclude that Castle failed to demonstrate diligence as required. As a result, Castle is not entitled to equitable tolling and the Court need not assess the merits of his untimely petition.

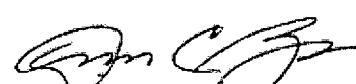
“When a district court denies a habeas petition on procedural grounds without reaching the petitioner’s underlying constitutional claim, a [Certificate of Appealability] should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid 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). Because reasonable jurists would not debate the denial of Castle’s § 2254 petition as untimely, he is not entitled to a Certificate of Appealability.

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

1. The Recommended Disposition of United States Magistrate Judge Matthew A. Stinnett [Record No. 18] is **ADOPTED** and **INCORPORATED** here by reference.
2. Castle’s petition for a writ of habeas corpus is **DISMISSED**, with prejudice, and **STRICKEN** from the docket.
3. A Certificate of Appealability will not issue.

Dated: September 14, 2023.




Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky

**Additional material
from this filing is
available in the
Clerk's Office.**