

APPENDIX

F

TABLE OF CONTENTS

United State Court of Appeals For the Eleventh Circuit,
No. 23-13460, ORDER, denying §2254 Habeas Corpus
(9 May 2024 1f
United States Court of Appeals for the Eleventh Circuit,
No: 23-13460, Motion for reconsideration DENIED (6 Aug 2024... 6f

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13460

WILLIAM DALE WATSON,

Petitioner-Appellant,

versus

LIMESTONE CF WARDEN,
ATTORNEY GENERAL, STATE OF ALABAMA,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 5:22-cv-01386-CLM-JHE

ORDER:

William Watson is an Alabama prisoner serving a 35-year sentence for various counts of sexual abuse. He filed a *pro se* 28 U.S.C. § 2254 petition, which the district court dismissed as untimely because Watson had failed to file it before the statute of limitations expired. Watson now moves this Court for leave to file an out-of-time motion for a certificate of appealability (“COA”), a COA, and leave to proceed *in forma pauperis* (“IFP”).

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). The movant satisfies this requirement by demonstrating that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation omitted). Where the district court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Id.* at 484-85.

Here, as an initial matter, Watson’s motion for leave to file an out-of-time COA is DENIED AS UNNECESSARY. Regardless, reasonable jurists would not debate the district court’s dismissal of Watson’s § 2254 petition as untimely.

First, Watson failed to file the petition before his limitations period expired, as, even allowing for statutory tolling during periods when he had motions for post-conviction relief pending in state court, he did not file the petition until nearly a year after the statute

23-13460

Order of the Court

3

of limitations had run. *See* 28 U.S.C. § 2244(d)(1)(A). Second, he failed to establish that he had been pursuing his rights diligently and that some extraordinary circumstances had prevent his timely filing that would entitle him to equitable tolling of the statute of limitations. *See Holland v. Florida*, 560 U.S. 631, 649 (2010).

Accordingly, his motion for leave to file an out-of-time motion for a COA is DENIED as unnecessary, and his motion for a COA is DENIED. His motion for IFP status is DENIED as moot.

/s/ Nancy G. Abudu

UNITED STATES CIRCUIT JUDGE

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.call.uscourts.gov

August 06, 2024

William Dale Watson
Limestone CF - Inmate Legal Mail
28779 NICK DAVIS RD
HARVEST, AL 35749-0000

Appeal Number: 23-13460-F
Case Style: William Watson v. Limestone CF Warden, et al
District Court Docket No: 5:22-cv-01386-CLM-JHE

The enclosed order has been ENTERED.

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

MOT-2 Notice of Court Action

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13460

WILLIAM DALE WATSON,

Petitioner-Appellant,

versus

LIMESTONE CF WARDEN,
ATTORNEY GENERAL, STATE OF ALABAMA,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 5:22-cv-01386-CLM-JHE

Before BRASHER, and ABUDU, Circuit Judges.

BY THE COURT:

William Watson has filed a motion for reconsideration of this Court's May 9, 2024, order denying his motions for a certificate of appealability and leave to proceed *in forma pauperis*. Upon review, Watson's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant reconsideration.

APPENDIX

E

TABLE OF CONTENTS

United States District Court Northern District of Alabama, No: 5:22-cv-1386-CLM-JHE, MEMORANDUM OPINION (18 Sep 2023).....	1e
United States District Court Northern District of Alabama, NO: 5:22-cv-1386-CLM-JHE, FINAL JUDGEMENT (18 Sep 2023).....	6e

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

WILLIAM DALE WATSON,
Petitioner,

v.

Case No. 5:22-cv-1386-CLM-JHE

**WARDEN CHADWICK,
CRABTREE, et al.,**
Respondents.

MEMORANDUM OPINION

Petitioner William Dale Watson filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1). The magistrate judge has entered a report, recommending the court grant the respondents' motion for summary dismissal and dismiss Watson's claims with prejudice as untimely. (Doc. 12). Watson objects to the report and recommendation, asserting that he is entitled to equitable tolling or that 28 U.S.C. § 2244(d)(1)(B) triggered the limitation period and his claims are timely filed. (Doc. 15 at 1–4).

The AEDPA limitation period may be equitably tolled only if a petitioner shows “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (internal quotation marks and citation omitted). The petitioner bears the burden of proving his entitlement to equitable tolling, *San Martin v. McNeil*, 633 F.3d 1257, 1268 (11th Cir. 2011), and will not prevail based on a showing of either extraordinary circumstances or diligence alone; the petitioner must establish both. *See Chavez v. Sec’y Fla. Dep’t of Corr.*, 647 F.3d 1057, 1072 (11th Cir. 2011). As explained below, Watson has not made the requisite showing that he diligently pursued his claims and that some extraordinary circumstance prevented him from timely filing his federal habeas petition.

1. Extraordinary Circumstance: law library

Watson contends that he is entitled to equitable tolling because prison officials denied him and other prisoners access to the law library from October 2020 to November 2022 because of the COVID-19 pandemic. (Doc. 15 at 1–3).¹ “[T]he right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances.” *Bill Johnson’s Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983). And the Due Process Clause assures prisoners a right of meaningful access to the courts. *See Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002). But a law library “is merely one constitutionally acceptable method to assure meaningful access to the courts,” and “alternative means” such as appointment of legal counsel or assistance from other legally trained persons are permitted. *Lewis v. Casey*, 518 U.S. 343, 350–51 (1996) (internal quotation marks and citation omitted). Plus, different ways to guarantee a prisoner’s access to courts are not cumulative of one another. *Id.* So for example, a prisoner represented by counsel is not also entitled to the right to access a law library.

Watson was represented by counsel during his collateral post-conviction proceedings. (Doc. 1 at 13; Doc. 7-18 at 13–33, 157–59; Doc. 7-20; Doc. 7-23; Doc. 7-25). And Watson acknowledges counsel represented him until November 12, 2021, when the Alabama Supreme Court denied his petition for writ of certiorari. (Doc. 11 at 5). Because Watson was represented by counsel until November 12, 2021, he was not also entitled to access to a law library during that period. *See Thomas v. Baldwin Cty. Corr. Ctr.*, No. 16-0555, 2017 WL 2602029, at *8 (S.D. Ala. Apr. 27, 2017) (finding that prisoner did not establish an access to courts claim because of lack of law library because he was represented by counsel during his criminal proceedings), *report and recommendation adopted*, 2017 WL 2592426 (June 15, 2017).

Accepting as true that Watson lacked access to a law library between November 12, 2021, when he was no longer represented by counsel, and November 9, 2022, when prison officials granted prisoners access to the law library, Watson is not entitled to equitable tolling. Watson asserts that “there

¹ Watson alleged in his reply brief that prison officials began denying prisoners access to the law library in August 2020. (Doc. 11 at 5).

was no way” for him to file a federal habeas petition “without access to the prison law library.” (Doc. 15 at 2). But Watson filed his 2254 petition on October 13, 2022—nearly one month *before* he says prison officials finally granted prisoners access to the law library on November 9, 2022. (Doc. 1 at 16; Doc. 11 at 5; Doc. 15 at 3). So Watson’s lack of access to a law library did not prevent him from understanding that his state collateral proceedings had concluded or from filing a federal habeas action. Because the record shows that Watson could file his petition before gaining access to the law library, the court finds that his lack of access to the law library didn’t present an extraordinary circumstance warranting equitable tolling. As a result, the court **OVERRULES** Watson’s objections based on equitable tolling grounds.

2. Commencement of Time Limit

Watson asserts that the limitation period did not begin to run when his conviction became final under 28 U.S.C. § 2244(d)(1)(A). (Doc. 15 at 2–3). He argues that instead § 2244(d)(1)(B) triggered the limitation period—the date on which an impediment to filing a petition created by State action in violation of the Constitution is removed, if the applicant was prevented from filing by such State action. (Doc. 15 at 3). According to Watson, the limitation period did not begin to run until November 2022, when prison officials allowed him access to the law library. (*Id.*).

In support of his assertion, Watson cites *Egerton v. Cockrell*, 334 F.3d 433 (5th Cir. 2003), in which the Fifth Circuit determined that a state prison’s failure to make a copy of AEDPA, or any other federal materials, available to the petitioner, without some alternative arrangement to notify the petitioner of his rights, constituted a state created impediment to filing a petition under § 2244(d)(1)(B). *Egerton*, 334 F.3d at 438–39.

Egerton is not binding on this court and also distinguishable from the facts here. As the Fifth Circuit noted, the petitioner in *Egerton* “did not file his state or federal habeas petitions” until after he was transferred to a facility “where he claim[ed] an adequate law library was available.” *Id.* at 437. Because the petitioner didn’t file his habeas petition until after he had access to an adequate law library, the Fifth Circuit distinguished the facts in *Egerton* from prior precedent in which an inadequate law library was found

to not trigger § 2244(d)(1)(B). *Egerton*, 334 F.3d at 437. As the court explained, the petitioner in *Felder v. Johnson*, 204 F.3d 158, 172–72 (5th Cir. 2000) argued that inadequacies in the law library prevented him from discovering AEDPA’s limitations period. *Egerton*, 334 F.3d at 437. But the court determined that the petitioner could not rely on § 2244(d)(1)(B) “because he had filed his petition *prior to obtaining a copy of the AEDPA*.” *Id.*


Prison officials’ failure to provide Watson access to a law library between November 2021 and November 2022 did not prevent him from filing a habeas action because he filed this case in October 2022 before he allegedly had access to the law library. So Watson’s circumstances mirror those of the petitioner in *Felder*, not *Egerton*. As a result, the State did not create any impediment which prevented Watson from filing his federal habeas petition. The court thus finds that § 2244(d)(1)(B) did not trigger Watson’s limitation period and **OVERRULES** Watson’s objections based on this ground.

After considering the record, the magistrate judge’s report, and Watson’s objections, the court **ADOPTS** the report and **ACCEPTS** the recommendation. Consistent with that recommendation, the court will grant the respondents’ motion for summary dismissal on timeliness grounds.

The court may issue a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, a “petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that “the issues presented were adequate to deserve encouragement to proceed further,” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). The court finds that Watson’s claims satisfy neither standard, so the court will not issue a certificate of appealability.

The court will enter a separate order that closes this case.

Done on September 18, 2023.



COREY L. MAZE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

WILLIAM DALE WATSON,
Petitioner,

v.

Case No. 5:22-cv-1386-CLM-JHE

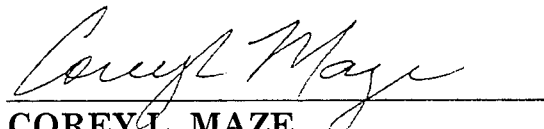
WARDEN CHADWICK,
CRABTREE, et al.,
Respondents.

FINAL JUDGMENT

Consistent with Federal Rule of Civil Procedure 58 and the memorandum opinion entered on this date, the court **GRANTS** the respondents' motion for summary dismissal and **DISMISSES WITH PREJUDICE** the claims in the petition for writ of habeas corpus (doc. 1). The court also **DENIES** a certificate of appealability.

Costs taxed as paid.

Done and Ordered on September 18, 2023.



COREY L. MAZE
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

WILLIAM DALE WATSON,)	
)	
Petitioner,)	
)	
v.)	Case No. 5:22-cv-01386-LCB-JHE
)	
WARDEN CHADWICK CRABTREE, et al.,)	
)	
Respondents.)	
)	

REPORT AND RECOMMENDATION

Petitioner William Dale Watson (“Petitioner” or “Watson”), being a person in custody under a judgment of a court of Alabama, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). The court referred the petition to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b) for preliminary review. Upon consideration, the undersigned recommends the respondents’ motion for summary dismissal be granted, and the claims in the petition for a writ of habeas corpus be dismissed as untimely.

I. Procedural History

On August 17, 2017, a jury in the Circuit Court of Limestone County, Alabama, found Watson guilty of the following: (a) four counts of sexual abuse of E.B., a child under the age of twelve in violation of Ala. Code § 13A-6-69.1 (1975); (b) two counts of sexual abuse of Z.W., a child under the age of twelve in violation of Ala. Code § 13A-6-69.1 (1975); and (c) four counts of second-degree sexual abuse of H.D. in violation of Ala. Code § 13A-6-67 (1975). (Doc. 7-1 at 50–55, 158–161). On October 11, 2017, the Limestone County Circuit Court sentenced Watson to (a) three concurrent twenty-year sentences and one consecutive fifteen-year sentence with

respect to victim E.B.; (b) two concurrent twenty-year sentences with respect to victim Z.W., to run concurrently with the twenty-year sentences related to victim E.B.; and (c) four concurrent one-year sentences with respect to victim H.D., to run concurrently with the twenty-year concurrent sentences related to victims E.B. and Z.W., effectively twenty-years plus fifteen years. (Doc.7-1 at 189–200; Doc. 7-2 at 1–2).

On November 9, 2017, Watson moved for a new trial. (Doc. 7-2 at 3–4). On December 18, 2017, the circuit court held a hearing on Watson’s motion. (*See* doc. 7-2 at 5, 8–9). That same day, the circuit court entered an order denying Watson’s motion for a new trial. (Doc. 7-2 at 10).

A. Direct Appeal

Watson appealed his 2017 convictions. (Doc. 7-5). On June 29, 2018, the Alabama Court of Criminal Appeals (“ACCA”) entered a memorandum opinion affirming Watson’s convictions and sentences. (Doc. 7-7). Watson neither requested rehearing in the ACCA nor filed a petition for a writ of certiorari in the Alabama Supreme Court. On July 18, 2018, the ACCA issued a certificate of judgment. (Doc. 7-8).

B. Collateral Attacks

1. Watson’s 2019 Rule 32 Petition

On May 23, 2019, Watson filed a petition for postconviction relief under Rule 32 of the Alabama Rules of Criminal Procedure (“Rule 32 petition”) in Limestone County Circuit Court. (Doc. 7-18 at 13–128). After receiving a response from the Limestone County District Attorney’s Office (doc. 7-18 at 129–155), the circuit court entered an order on July 31, 2019, summarily dismissing Watson’s 2019 Rule 32 petition. (Doc. 7-18 at 156).

On August 16, 2019, Watson filed a motion seeking to have the circuit court vacate its July

31, 2019 order that summarily dismissed his Rule 32 petition. (Doc. 7-18 at 157–59). The circuit court held a hearing on September 11, 2019 (doc. 7-18 at 160), and, on the same day, entered a supplemental order stating additional grounds for summarily dismissing Watson’s Rule 32 petition (doc. 7-18 at 161). Watson attempted to appeal this dismissal (doc. 7-18 at 162–67), but on October 22, 2019, the ACCA dismissed Watson’s appeal as untimely and issued a certificate of judgment. (Docs. 7-9, 7-10).

2. Watson’s 2020 Rule 32 Petition

On January 6, 2020, the Limestone County Circuit Court received Watson’s second Rule 32 petition, dated December 10, 2019, seeking, *inter alia*, an out-of-time appeal of his 2019 Rule 32 petition. (Doc. 7-18 at 197–200; Doc. 7-19 at 6–30). The circuit court dismissed Watson’s Rule 32 petition (doc. 7-19 at 36), and Watson appealed (doc. 7-19 at 37–41).

On September 3, 2020, the ACCA remanded the case to the Limestone County Circuit Court for the lower court to entertain Watson’s request for an out-of-time appeal of his 2019 Rule 32 petition. (Doc. 7-15). On September 15, 2020, the Limestone County Circuit Court granted Watson an out-of-time appeal of his 2019 Rule 32 petition. (Doc. 7-19 at 56).

3. Appeal of Watson’s 2019 Rule 32 Petition

On return to remand, the ACCA entered a memorandum opinion on October 16, 2020. (Doc. 7-16). The ACCA determined that since Watson had been permitted to proceed with an out-of-time appeal of his 2019 Rule 32 petition, those proceedings had been reopened. (Doc. 7-16 at 4). The ACCA dismissed the part of Watson’s appeal challenging the dismissal of his out-of-time appeal because he had been granted relief on that claim, and reversed that part of the circuit court’s judgment dismissing the remaining claims in Watson’s 2020 Rule 32 petition. (Doc. 7-

16 at 5). The ACCA directed the circuit court to hold the remaining claims in abeyance while Watson pursued an appeal from the judgment dismissing his 2019 Rule 32 petition. (Doc. 7-16 at 5).

On June 25, 2021, the ACCA affirmed the judgment of the circuit court dismissing Watson's 2019 Rule 32 petition. (Doc. 7-22). On July 16, 2021, the ACCA overruled Watson's application for rehearing. (Doc. 7-23). On November 12, 2021, the Alabama Supreme Court denied Watson's petition for a writ of certiorari.¹ (Doc. 7-24). On the same day, the ACCA issued a certificate of judgment. (Doc. 7-25).

C. Federal Habeas Petition

Watson filed his *pro se* federal habeas petition with this court on October 13, 2022. (Doc. 1 at 16).² On November 9, 2022, the undersigned ordered the respondents to appear and show cause why the requested relief should not be granted. (Doc. 5). On December 9, 2022, the respondents filed an Answer in which they assert that the petition is due to be dismissed because it is barred by the one-year statute of limitations enacted by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). (Doc. 7 at 19–22). The respondents also contend that Watson's claims are either procedurally barred or meritless. (Doc. 7 at 22–40). By order dated December

¹ Although Watson contends that he does not know when the ACCA affirmed the circuit court's dismissal of his 2019 Rule 32 petition because he "never received the judgment," (doc. 1 at 26), it is apparent that an application for rehearing and petition for a writ of certiorari were filed by him or on his behalf. (Docs. 7-23, 7-24).

² Because an inmate proceeding *pro se* has virtually no control over the mailing of his pleading, it is deemed to be filed at the time the prisoner delivers the pleading to prison or jail officials to be mailed. *See Houston v. Lack*, 487 U.S. 266, 270–72 (1988). Watson's federal habeas petition is dated October 13, 2022 (doc. 1 at 16), so the undersigned assumes that is the date Watson submitted the petition to prison officials for mailing and deems the petition filed on that date.

12, 2022, the undersigned advised the parties that the respondents' Answer would be treated as a motion for summary dismissal pursuant to Rule 8(a) of the *Rules Governing Section 2254 Cases* and provided Watson 21 days to supply any additional evidentiary materials or legal arguments to support his petition. (Doc. 8). The undersigned granted, in part, Watson's motion for an extension of time to file a reply (doc. 10), and the court received Watson's reply on March 3, 2023 (doc. 11). Thus, the petition is ripe for review.

II. Claims

Watson asserts the following claims for relief in his federal habeas petition:

1. The trial court was without jurisdiction because defense counsel's legal secretary forged Watson's name to a waiver of arraignment form (doc. 1 at 5, 19);
2. A statement Watson gave while in Huntsville Hospital's psychiatric ward was made involuntarily and used against him at trial (doc. 1 at 7, 20–21);
3. Watson's defense counsel was ineffective for failing to demand an election or unanimity jury instruction (doc. 1 at 9, 22–23); and
4. The cumulative effect of defense counsel's errors resulted in the violation of Watson's constitutional right to counsel under *United States v. Cronin*, 466 U.S. 648 (1984). (Doc. 1 at 10, 24–25).

III. Analysis

The respondents argue that the claims in Watson's petition are untimely, and either procedurally barred or meritless. (Doc. 7). The undersigned agrees that Watson's claims are untimely and therefore does not reach the respondents' remaining arguments that the claims are also procedurally barred or meritless.

A. Statute of Limitations

AEDPA provides a one-year limitation period for filing a habeas action under 28 U.S.C. § 2254. 28 U.S.C. § 2244(d)(1). This limitation period begins to run from the latest 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.

Id. Watson does not allege any facts suggesting § 2244(d)(1)(B), (C), or (D) triggered the limitation period. Instead, the facts before the court establish that § 2244(d)(1)(A) is the trigger for Watson's limitation period. For this reason, the limitation period began to run on the date Watson's convictions became final by the conclusion of direct review or the expiration of his time for seeking direct review.

When a petitioner appeals his conviction to the Alabama Supreme Court but does not file an appeal to the United States Supreme Court, his conviction is final under § 2244(d)(1)(A) on the 90th day after the date of the state court order denying review. *See, e.g., Green v. Sec'y, Dep't of Corr.*, 877 F.3d 1244, 1247 (11th Cir. 2017) (citing *Nix v. Sec'y for Dep't of Corr.*, 393 F.3d 1235, 1236–37 (11th Cir. 2004)). Where, as here, a state prisoner does not apply for rehearing in the ACCA or petition for certiorari review in the Alabama Supreme Court, he is not entitled to

the benefit of the 90-day period within which he might have sought certiorari review in the U.S. Supreme Court, had he first sought review in the state's highest court. *See Pugh v. Smith*, 465 F.3d 1295, 1299–300 (11th Cir. 2006) (holding that petitioner is not entitled to the benefit of 90-day period for U.S. Supreme Court certiorari review when he does not seek review in the state's highest court).

Here, the ACCA affirmed Watson's convictions on June 29, 2018, on direct appeal. (Doc. 7-7). Pursuant to the Alabama Rules of Appellate Procedure, Watson had 14 days from the date of the ACCA's decision to file an application for rehearing. *See* ALA. R. APP. P. 40(c). With limited exceptions not applicable here, filing an application for rehearing in the ACCA is a prerequisite to filing a petition for a writ of certiorari in the Alabama Supreme Court. *See* ALA. R. APP. P. 39(c). Because Watson did not file an application for rehearing of the ACCA's June 29, 2018 decision, his convictions became final for purposes of § 2244(d)(1)(A) on July 13, 2018—the expiration of the deadline to apply for rehearing. *See Gonzalez v. Thaler*, 565 U.S. 134, 137 (2012) (“We hold that, for a state prisoner who does not seek review in a State's highest court, the judgment becomes final on the date that the time for seeking such review expires.”) (internal quotation marks omitted). Thus, under the AEDPA, Watson's one-year time limitation to file a § 2254 petition with this court began to run the following day on July 14, 2018. *See Green*, 877 F.3d at 1247 n.3 (“The limitation period began to run the day after the conviction and sentence became final”) (citing Fed. R. Civ. P. 6(a)(1)). It expired one year later on July 14, 2019. *See Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008) (noting “limitations period expires on the anniversary of the date it began to run”). As noted, Watson did not file the present federal petition until October 13, 2022. (Doc. 1 at 16). Because the limitation period expired before

Watson filed his federal habeas petition, the petition is time-barred pursuant to 28 U.S.C. § 2244(d), absent a recognized exception.

1. Statutory Tolling

Under § 2244(d)(2), the time-period during which “a properly filed application for State post-conviction or other collateral review” of the underlying judgment or claim is pending is not counted towards any period of limitation. 28 U.S.C. § 2244(d)(2); *Cramer v. Sec’y, Dep’t of Corr.*, 461 F.3d 1380, 1383 (11th Cir. 2006). Three hundred-twelve days elapsed between July 14, 2018, the date Watson’s limitation period began to run, and May 23, 2019, the date Watson filed his first Rule 32 petition in the Limestone County Circuit Court. (Doc. 7-18 at 13–128).

Watson attempted to appeal the circuit court’s dismissal of his Rule 32 petition, (doc. 7-18 at 162–67), but on October 22, 2019, the ACCA dismissed the appeal as untimely and issued a certificate of judgment. (Docs. 7-9, 7-10). Forty-eight more days elapsed between October 22, 2019, and December 10, 2019, when Watson filed his second Rule 32 petition seeking an out-of-time appeal of his 2019 petition. (Doc. 7-18 at 197–200; Doc. 7-19 at 6–30). Therefore, only five days remained of Watson’s one-year limitation period under the AEDPA.

After the circuit court granted Watson’s out-of-time appeal and on return to remand, the ACCA affirmed the circuit court’s judgment dismissing Watson’s 2019 Rule 32 petition and issued a certificate of judgment on November 12, 2021. (Doc. 7-25). Three hundred thirty-four days elapsed before Watson filed the present federal habeas petition on October 13, 2022. (Doc. 1 at 16). Thus, Watson’s one-year limitation period expired well before he filed the present federal habeas petition, and statutory tolling does not preclude dismissal of Watson’s petition as time-barred.

2. Equitable Tolling

The AEDPA limitation may be equitably tolled, but a petitioner must show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (internal quotation marks and citation omitted). Nevertheless, equitable tolling is “typically applied sparingly,” *Steed v. Head*, 219 F.3d 1298, 1300 (11th Cir. 2000), and is available “only in truly extraordinary circumstances.” *Johnson v. United States*, 340 F.3d 1219, 1226 (11th Cir. 2003). The petitioner bears the burden of proving his entitlement to equitable tolling, *San Martin v. McNeil*, 633 F.3d 1257, 1268 (11th Cir. 2011), and will not prevail based upon a showing of either extraordinary circumstances or diligence alone; the petitioner must establish both. *See Chavez v. Sec’y Fla. Dep’t of Corr.*, 647 F.3d 1057, 1072 (11th Cir. 2011).

Watson contends that his appellate counsel failed to file an application for rehearing to the ACCA and a petition for a writ of certiorari in the Alabama Supreme Court on direct appeal, which caused his limitation period to run sooner. (Doc. 11 at 4–5). To the extent Watson argues he is entitled to equitable tolling due to the ineffective assistance of his appellate counsel based on counsel’s failure to file an application for rehearing in the ACCA and a petition for a writ of certiorari in the Alabama Supreme Court (doc. 11 at 4–5), he is entitled to no relief.

Watson did not have a right to counsel to file an application for rehearing or a petition for certiorari since such review is discretionary. *See* ALA. R. APP. P. 39(a) (“Certiorari review is not a matter of right, but of judicial discretion.”). Although the Constitution “requires appointment of counsel for indigent state defendants on their first appeal as of right,” *Ross v. Moffitt*, 417 U.S. 600, 602 (1974), the same is not true for seeking discretionary state review. *Id.* at 609–16; *see*

also *Wainwright v. Torna*, 455 U.S. 586, 587 (1982) (reaffirming that “a criminal defendant does not have a constitutional right to counsel to pursue discretionary state appeals or applications for review in this Court.”); *Pennsylvania v. Finlay*, 481 U.S. 551, 555 (1987) (holding that “a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal on direct review of his conviction” beyond the “first appeal of right”). Consequently, the failure of appellate counsel to seek discretionary review does not constitute an extraordinary circumstance to justify equitable tolling.

Next, Watson contends that he was not aware of AEDPA’s one-year limitation “until after Nov. 9, 2022[,] when preparing his habeas corpus.” (Doc. 11 at 5). Watson asserts that he has not had access to the prison law library since August 24, 2020, due to COVID-19, and it was not until November 9, 2022, that the law library became accessible. (Doc. 11 at 5). Watson’s assertions do not entitle him to equitable tolling for several reasons.

“As with any litigant, *pro se* litigants are deemed to know of the one-year statute of limitations” and, therefore, “confusion or ignorance about the law” does not constitute extraordinary circumstances. *Perez v. Florida*, 519 F. App’x 995, 997 (11th Cir. 2013) (internal quotation marks and citation omitted); *Jackson v. Astrue*, 506 F.3d 1349, 1356 (11th Cir. 2007) (explaining that “ignorance of the law does not, on its own, satisfy the constricted extraordinary circumstances test”) (quotation marks and citations omitted); *Wakefield v. R.R. Ret. Bd.*, 131 F.3d 967, 970 (11th Cir. 1997) (“Ignorance of the law usually is not a factor that can warrant equitable tolling.”) (citation omitted). Thus, Watson’s ignorance of the limitation period does not constitute an extraordinary circumstance that prevented the timely filing of his federal habeas petition.

Moreover, the Eleventh Circuit has held that “no access or limited access to a law library does not qualify as an extraordinary circumstance to warrant equitable tolling.” *Bass v. Attorney Gen.*, No. 20-10985, 2022 WL 1658637, at *2 (11th Cir. May 25, 2022) (citing *Atkins v. United States*, 204 F.3d 1086, 1089–90 (11th Cir. 2000)). Watson contends that he did not have access to the prison law library after August 24, 2020, due to COVID-19, (doc. 11 at 5), but he does not explain what measures he took to inform himself of the federal limitation period prior to August 2020. Watson has not demonstrated that he diligently pursued his claims and that some extraordinary circumstance prevented him from timely filing his federal habeas petition. Based on the foregoing, Watson has not alleged facts to invoke equitable tolling.

3. Actual Innocence

The United States Supreme Court has held that actual innocence, if proved, serves as a gateway allowing a habeas petitioner to overcome an impediment due to the expiration of the statute of limitations. *See McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). Nevertheless, “tenable actual-innocence gateway pleas are rare: ‘A petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.’” *Id.* (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995) (alteration adopted)). “[This] standard is demanding and permits review only in the ‘extraordinary’ case.” *House v. Bell*, 547 U.S. 518, 538 (2006) (quotation marks and citations omitted).

Moreover, “[t]o meet the threshold showing of innocence in order to justify a review of the merits of the constitutional claims, the new evidence must raise sufficient doubt about the petitioner’s guilt to undermine confidence in the result of the trial. Actual innocence means

factual innocence, not mere legal insufficiency.” *Ray v. Mitchem*, 272 F. App’x 807, 810 (11th Cir. 2008) (quotation marks and citations omitted) (some alterations adopted). The Supreme Court observed in *Schlup*:

[A] substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare. To be credible, 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. Because such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful.

513 U.S. at 324 (citation omitted).

In his petition and reply, Watson argues that numerous legal errors occurred during his trial. (Docs. 1 & 11). However, legal innocence is insufficient; Watson must establish his factual innocence. *San Martin*, 633 F.3d at 1268. To the extent Watson contends he is factually innocent of sexual abuse, he points to no new reliable evidence to support a claim of actual innocence. *See Schlup* 513 U.S. at 324. Because Watson has not made a credible showing of actual innocence to warrant tolling of the statute of limitations, the claims in his petition are due to be dismissed as untimely.

IV. Recommendation

Based on the foregoing, the undersigned **RECOMMENDS** the respondents’ motion for summary dismissal be **GRANTED**, and the claims in the petition for a writ of habeas corpus be **DISMISSED WITH PREJUDICE** as untimely.

In accordance with Rule 11 of the *Rules Governing Section 2254 Cases*, the undersigned **FURTHER RECOMMENDS** that a certificate of appealability be **DENIED**. This court may issue a certificate of appealability “only if the applicant has made a substantial showing of the

denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, a “petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong,” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that “the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotation marks omitted). Based on the foregoing discussion, the undersigned concludes Watson has failed to make the requisite showing.

V. Notice of Right to Object

A petitioner may file specific written objections to this report and recommendation. The petitioner must file any objections with the Clerk of Court within fourteen (14) calendar days from the date the report and recommendation is entered. Objections should specifically identify all findings of fact and recommendations to which objection is made and the specific basis for objecting. Objections also should specifically identify all claims contained in the petition that the report and recommendation fails to address. Objections should not contain new allegations, present additional evidence, or repeat legal arguments.

Failing to object to factual and legal conclusions contained in the magistrate judge’s findings or recommendations waives the right to challenge on appeal those same conclusions adopted in the district court’s order. In the absence of a proper objection, however, the court may review on appeal for plain error the unobjected to factual and legal conclusions if necessary in the interests of justice. 11th Cir. R. 3-1.

On receipt of objections, a United States District Judge will review *de novo* those portions of the report and recommendation to which specific objection is made and may accept, reject, or modify in whole or in part, the undersigned’s findings of fact and recommendations. The district

judge also may refer this action back to the undersigned with instructions for further proceedings.

The petitioner may not appeal the magistrate judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. The petitioner may only appeal from a final judgment entered by a district judge.

DONE this 14th day of July, 2023.

A handwritten signature in black ink, appearing to read 'J. H. England, III', written over a horizontal line.

JOHN H. ENGLAND, III
UNITED STATES MAGISTRATE JUDGE

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