IN THE

SUPREME COURT OF THE UNITED STATES

GLYNN L. WELLS©
Petitioner,

—VS—

SHIRLEE HARRY,
Respondent.

U.S. Supreme Court
Case/Docket No. ________

UNDER COVER OF THIS PAGE IS APPENDIX-A; AND CONTAINS THE FOLLOWING

* The United States Court of Appeals for the SIXTH Circuit ORDER dated Nov. 15, 2017, Case No 17-1476

28 U.S.C. § 1746

W/O Prejudice & Recourse
Glynn Wells© (178200)
Lakeland Corr. Fac.
141 First Street
Coldwater, MI 49036

No. 17-1476

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Nov 15, 2017
DEBORAH S. HUNT, Clerk

GLYNN LETERREL WELLS,)
)
Petitioner-Appellant,)
)
v.) ORDER
)
SHIRLEE HARRY, Warden,)
)
Respondent-Appellee.)

Glynn Leterrel Wells, a pro se Michigan prisoner, appeals a district court judgment dismissing his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 and moves this court for a certificate of appealability.

In 1990, a jury convicted Wells of one count of assault with intent to murder, two counts of criminal sexual conduct, one count of unarmed robbery, and one count of possession of a firearm during the commission of a felony. He was sentenced to an effective term of life in prison. The Michigan Court of Appeals affirmed on December 29, 1992. *People v. Wells*, No. 129335 (Mich. Ct. App. Dec. 29, 1992) (per curiam).

In 2015, Wells filed a motion for post-conviction relief in the trial court. The trial court denied the motion, *People v. Wells*, Nos. 89-009805-01-FC, 89-011032-01-FH (Wayne Co. Cir. Ct. May 7, 2015), and thereafter denied Wells's motion for reconsideration. The Michigan Court of Appeals denied Wells's application for leave to appeal, *People v. Wells*, No. 327598 (Mich. Ct. App. Aug. 11, 2015), and thereafter denied Wells's motion for reconsideration, *People v.*

APPENDIX A.

Wells, No. 327598 (Mich. Ct. App. Oct. 6, 2015). The Michigan Supreme Court denied leave to appeal. *People v. Wells*, 881 N.W.2d 479 (Mich. 2016) (mem.).

On January 3, 2017, Wells filed the instant habeas corpus petition, raising fourteen grounds for relief. The district court dismissed the petition as time-barred and declined to issue a certificate of appealability. The district court thereafter denied Wells's motion for reconsideration and amended motion for reconsideration.

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). When the district court "denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim," the petitioner can satisfy § 2253(c)(2) by establishing 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 one-year statute of limitations applies to habeas petitions filed under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). *See* 28 U.S.C. § 2244(d)(1). Because Wells's conviction became final prior to the enactment of the AEDPA, the one-year limitations period applicable to his habeas petition expired on April 24, 1997, one year after the AEDPA's enactment. *See Ross v. Berghuis*, 417 F.3d 552, 554 (6th Cir. 2005). Wells did not file his petition until January 2017, nearly twenty years after the limitations period expired. The filing of Well's motion for post-conviction relief in 2015 did not toll the statute of limitations because that motion itself was filed outside the one-year period and the tolling provision of § 2244(d)(2) does not revive an expired limitations period. 28 U.S.C. § 2244(d)(2); *see Hargrove v. Brigano*, 300 F.3d 717, 718 n.1 (6th Cir. 2002) (noting that a state court post-conviction motion that is filed following the expiration of the limitations period cannot toll that period). Reasonable jurists therefore could not debate the district court's conclusion that Wells's habeas petition is time-barred.

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There is no authority supporting Wells's argument that the AEDPA's statute of limitations does not apply where a petitioner asserts that the trial court lacked subject matter jurisdiction. To the contrary, even if a state court conviction is void under state law, the federal habeas statute of limitations still applies where, as here, the petitioner is in custody pursuant to that state court judgment. *Mackey v. Warden, Lebanon Corr. Inst.*, 525 F. App'x 357, 361 (6th Cir. 2013); *Frazier v. Moore*, 252 F. App'x 1, 5-6 (6th Cir. 2007). No reasonable jurist therefore could debate the district court's conclusion that a jurisdictional defect in Wells's conviction would not render § 2244(d)'s limitations period inapplicable.

Wells argues that he is entitled to equitable tolling. A habeas petition seeking equitable tolling 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) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)).

Wells cannot meet this burden. He claims that his trial and appellate counsel were ineffective and that their ineffectiveness prevented him from timely filing his habeas petition. This court has repeatedly held that "a petitioner's reliance on the unreasonable and incorrect advice of his or her attorney is not a ground for equitable tolling." *Allen v. Yukins*, 366 F.3d 396, 403 (6th Cir. 2004). Wells offers nothing else to explain why he was prevented from filing his habeas petition before the limitations period expired on April 24, 1997—over four years after his conviction became final. Reasonable jurists therefore would agree with the district court's conclusion that Wells is not entitled to equitable tolling. *See Robinson v. Easterling*, 424 F. App'x 439, 443 (6th Cir. 2011) (noting that this court does not "grant[] equitable tolling to a petitioner who [sits] on his rights").

Absent equitable tolling, the only gateway for review of an otherwise time-barred claim is a showing of actual innocence. *See McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928 (2013). A credible claim of actual innocence "requires [a] 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."

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Schlup v. Delo, 513 U.S. 298, 324 (1995). The Supreme Court has cautioned that "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.'" *McQuiggin*, 133 S. Ct. at 1928 (quoting *Schlup*, 513 U.S. at 329).

Wells has not presented *any* evidence—let alone new, reliable evidence—to support his claim of actual innocence. He claims that the prosecution suppressed results from a rape kit that show that he is actually innocent and that the Michigan State Police are currently in possession of the rape kit results. Wells, however, has not produced the rape kit results, and he offers nothing other than his own subjective belief that the results would demonstrate that he is actually innocent of the crimes for which he was convicted. No reasonable jurist would debate the district court's conclusion that Wells had not made a credible showing of actual innocence to overcome the limitations bar.

Finally, reasonable jurists could not debate the district court's decision to deny Wells's request that it hold an evidentiary hearing so that he could develop his actual-innocence claim. *See Muniz v. Smith*, 647 F.3d 619, 625 (6th Cir. 2011) ("A district court is not required to hold an evidentiary hearing if the record precludes habeas relief.").

Accordingly, the court **DENIES** the motion for a certificate of appealability.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX A.

IN THE
SUPREME COURT OF THE UNITED STATES
Term __________ 2018

GLYNN L. WELLS©
Petitioner,

U.S. Supreme Court
Case/Docket No. __________

-VS-

SHIRLEE HARRY, Warden
Respondent.

UNDER COVER OF THIS PAGE
IS APPENDIX - B; AND
CONTAINS THE FOLLOWING:

* The United States District Court
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION ORDERS;
TO SHOW CAUSE; DISMISSING Petitioner's
Habeas Corpus; reconsideration
and Amended reconsideration.
Case NO 2:17-CV-10065

28 U.S.C. §1746

w/o Prejudice & Recourse
Glynn Wells©(178200)
Lakeland Corr. Fac.
141 First Street
Coldwater, MI 49036

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLYNN L. WELLS,

Petitioner,

Case Number 17-10065
Honorable David M. Lawson

v.

SHIRLEE HARRY,

Respondent.

______________________________/

ORDER TO SHOW CAUSE

Petitioner Glynn L. Wells filed a petition for a writ of habeas corpus with this Court under 28 U.S.C. § 2254 challenging his 1990 state criminal convictions of assault with intent to murder, two counts of first-degree criminal sexual conduct, unarmed robbery, and possession of a firearm during the commission of a felony following a jury trial in the Wayne County Circuit Court. He raises 14 claims in his petition, but it does not appear that he has filed his petition within the one-year limitation period set out in 28 U.S.C. § 2244(d). Therefore, the Court will order the petitioner to show cause why this case should not be dismissed as untimely.

I.

The petitioner was convicted and sentenced in 1990. The Michigan Court of Appeals ultimately affirmed his convictions and sentences in 1992. *People v. Wells*, No. 129335 (Mich. Ct. App. Dec. 29, 1992) (per curiam). It appears that the petitioner did not file a direct appeal in the Michigan Supreme Court.

In 2015, the petitioner filed a motion in the state trial court to dismiss for lack of subject matter jurisdiction, to dismiss the complaint and warrant and information, for a cause and prejudice hearing, to remand for an evidentiary hearing, and for relief from judgment. The trial court

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summarily denied the motions under to Michigan Court Rule 6.502(B)(2), finding that the petitioner's ineffective assistance of trial counsel claim was addressed on direct appeal and that his other claims provided no basis for relief. *People v. Wells*, Nos. 89-009805-01-FC, 89-011032-01-FH (Wayne Co. Cir. Ct. May 7, 2015). The Michigan court also denied reconsideration. The petitioner filed an application for leave to appeal in the Michigan Court of Appeals, which was denied under Michigan Court Rule 6.508(D)(3)(a) and (b) because it asserted issues that could have been raised previously and failed to establish good cause and actual prejudice for not doing so. *People v. Wells*, No. 327598 (Mich. Ct. App. Aug. 11, 2015). The Michigan Court of Appeals also denied reconsideration. *People v. Wells*, No. 327598 (Mich. Ct. App. Oct. 6, 2015). The petitioner then filed an application for leave to appeal in the Michigan Supreme Court, which was similarly denied under Michigan Court Rule 6.508(D). *People v. Wells*, 499 Mich. 983, 881 N.W.2d 479 (July 26, 2016).

The petitioner's federal habeas petition is dated January 3, 2017.

II.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified at 28 U.S.C. § 2241 *et seq*., became effective on April 24, 1996. AEDPA includes a one-year period of limitations for habeas petitions brought by prisoners challenging state court judgments. The statute states:

> (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--
>
> > (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

APPENDIX B.

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.

(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. *See Isham v. Randle*, 226 F.3d 691, 694-95 (6th Cir. 2000) (dismissing case filed 13 days late); *Wilson v. Birkett*, 192 F. Supp. 2d 763, 765 (E.D. Mich. 2002).

The petitioner's convictions and sentences became final in 1993, before AEDPA's effective date, which was April 24, 1996. Prisoners whose convictions became final before AEDPA's effective date are given a one-year period afterward in which to file their federal habeas petitions. *Jurado v. Burt*, 337 F.3d 638, 640 (6th Cir. 2003). The petitioner was required to file his federal habeas petition on or before April 24, 1997. However, that date could be enlarged if, before the deadline expires, the petitioner properly filed an application for state post-conviction or collateral review under 28 U.S.C. § 2244(d)(2).

The record before the Court indicates that the petitioner filed his various motions for post-judgment relief (collectively considered as a motion for relief from judgment) in the state trial court in 2015. The one-year period expired well before the petitioner sought post-conviction collateral review in the state courts. 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.

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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. 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). The petitioner did not submit his federal habeas petition until January 3, 2017, long after the one-year grace period expired. It appears, therefore, that his petition is untimely and subject to dismissal. However, there may be an explanation why the petition ought to be considered timely. The Court will allow the petitioner an opportunity to explain.

III.

Accordingly, it is **ORDERED** that the petitioner must show cause in writing **on or before March 2, 2017** why his petition should not be dismissed as untimely.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: January 31, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 31, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI

APPENDIX B.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLYNN L. WELLS,

Petitioner,

Case Number 17-10065
Honorable David M. Lawson

v.

SHIRLEE HARRY,

Respondent.
_______________________________/

OPINION AND ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Glynn L. Wells filed a petition for a writ of habeas corpus with this Court under 28 U.S.C. § 2254 challenging his 1990 state criminal convictions of assault with intent to murder, two counts of first-degree criminal sexual conduct, unarmed robbery, and possession of a firearm during the commission of a felony following a jury trial in the Wayne County Circuit Court. He raises 14 claims in his petition, but he did not file his petition within the one-year limitation period set out in 28 U.S.C. § 2244(d). On January 31, 2017, the Court entered an order requiring the petitioner to show cause why this case should not be dismissed as untimely. The petitioner responded on February 28, 2017. Because Wells did not comply with the one-year statute of limitations applicable to federal habeas actions, *see* 28 U.S.C. § 2244(d)(1), and the petition is not saved by equitable tolling, the Court must dismiss the petition and deny relief.

I.

The petitioner was convicted and sentenced in 1990. The Michigan Court of Appeals ultimately affirmed his convictions and sentences in 1992. *People v. Wells*, No. 129335 (Mich. Ct. App. Dec. 29, 1992) (per curiam). It appears that the petitioner did not file a direct appeal in the Michigan Supreme Court.

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In 2015, the petitioner filed a motion in the state trial court to dismiss for lack of subject matter jurisdiction, to dismiss the complaint and warrant and information, for a cause and prejudice hearing, to remand for an evidentiary hearing, and for relief from judgment. The trial court summarily denied the motions under Michigan Court Rule 6.502(B)(2), finding that the petitioner's ineffective assistance of trial counsel claim was addressed on direct appeal and that his other claims provided no basis for relief. *People v. Wells*, Nos. 89-009805-01-FC, 89-011032-01-FH (Wayne Co. Cir. Ct. May 7, 2015). The Michigan court also denied reconsideration. The petitioner filed an application for leave to appeal in the Michigan Court of Appeals, which was denied under Michigan Court Rule 6.508(D)(3)(a) and (b) because it asserted issues that could have been raised previously and failed to establish good cause and actual prejudice for not doing so. *People v. Wells*, No. 327598 (Mich. Ct. App. Aug. 11, 2015). The Michigan Court of Appeals also denied reconsideration. *People v. Wells*, No. 327598 (Mich. Ct. App. Oct. 6, 2015). The petitioner then filed an application for leave to appeal in the Michigan Supreme Court, which was similarly denied under Michigan Court Rule 6.508(D). *People v. Wells*, 499 Mich. 983, 881 N.W.2d 479 (July 26, 2016).

The petitioner's federal habeas petition is dated January 3, 2017.

II.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified at 28 U.S.C. § 2241 *et seq.*, became effective on April 24, 1996. AEDPA includes a one-year period of limitations for habeas petitions brought by prisoners challenging state court judgments. The statute states:

> (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The

APPENDIX B.

limitation period shall run from the latest of--

> (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.

(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. *See Isham v. Randle*, 226 F.3d 691, 694-95 (6th Cir. 2000) (dismissing case filed 13 days late); *Wilson v. Birkett*, 192 F. Supp. 2d 763, 765 (E.D. Mich. 2002).

The petitioner's convictions and sentences became final in 1993, before AEDPA's effective date, which was April 24, 1996. Prisoners whose convictions became final before AEDPA's effective date are given a one-year period afterward in which to file their federal habeas petitions. *Jurado v. Burt*, 337 F.3d 638, 640 (6th Cir. 2003). The petitioner was required to file his federal habeas petition on or before April 24, 1997. However, that date could be enlarged if, before the deadline expired, the petitioner properly filed an application for state post-conviction or collateral review under 28 U.S.C. § 2244(d)(2).

The record before the Court indicates that the petitioner filed his various motions for post-judgment relief in the state trial court in 2015. The one-year period expired well before the

APPENDIX B,

petitioner sought post-conviction collateral review in the state courts. 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. 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). The petitioner did not submit his federal habeas petition until January 3, 2017, long after the one-year grace period expired.

The petitioner contends that AEDPA's statute of limitations is not jurisdictional and allows for equitable tolling in appropriate circumstances. The petitioner is correct that the one-year statute of limitations is not a jurisdictional bar and is subject to equitable tolling. *Holland v. Florida*, 560 U.S. 631, 645 (2010). The Supreme Court has explained that a habeas 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 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)); *see also Robertson v. Simpson*, 624 F.3d 781, 783-84 (6th Cir. 2010). A petitioner has the burden of demonstrating that he is entitled to equitable tolling. *Allen v. Yukins*, 366 F.3d 396, 401 (6th Cir. 2004). "Typically, equitable tolling applied only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Jurado v. Burt*, 337 F.3d 638, 642 (6th Cir. 2003) (quoting *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560 (6th Cir. 2000)).

The petitioner makes no such showing. The petitioner argues that his appointed trial and appellate attorneys were ineffective. In support of his argument, the petitioner provides a number

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of letters from 1990 that he sent to his appellate attorney expressing his dissatisfaction. The petitioner's convictions and sentences became final in 1993. He has not explained how his counsels' allegedly ineffective assistance prevented him from pursuing a federal habeas corpus petition prior to April 24, 1997. The petitioner could have filed his petition anytime within a four year period. Moreover, the petitioner does not explain how he has pursued his rights diligently from 1997 to 2015 when he filed for post-judgment relief in the Michigan courts. The petitioner has not shown that he is entitled to equitable tolling under *Holland.*

The petitioner also makes an actual innocence argument. The Supreme Court and the Sixth Circuit have held that a credible claim of actual innocence may equitably toll the one-year statute of limitations. *McQuiggin v. Perkins*, --- U.S. ---, ---, 133 S. Ct. 1924, 1928 (2013); *Souter v. Jones*, 395 F.3d 577, 588-90 (6th Cir. 2005). To support a claim of actual innocence, a petitioner in a collateral proceeding "must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." *Bousley v. United States*, 523 U.S. 614, 623 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327-28 (1995)); *see also House v. Bell*, 547 U.S. 518, 537-39 (2006). A valid claim of actual innocence requires a petitioner "to support his allegations of constitutional error with new reliable evidence — whether it be exculpatory scientific evidence, trustworthy eyewitness account, or critical physical evidence — that was not presented at trial." *Schlup*, 513 U.S. at 324. Actual innocence means "factual innocence, not mere legal insufficiency." *Bousley*, 523 U.S. at 623. In keeping with Supreme Court authority, the Sixth Circuit has recognized 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).

The petitioner has not made a credible claim of actual innocence. According to the

APPENDIX B.

petitioner, the Michigan State Police are in possession of a rape test kit that would show his actual innocence. He requested the rape test kit results from the Michigan forensics laboratory, but was informed that no such results existed. The petitioner says that in 2014, after watching television shows such as Law & Order and CSI: Crime Scene Investigation, he realized that other DNA evidence, such as hair and skin samples, should have been collected. The petitioner represents that he sent a new request to the forensics laboratory detailing the specific DNA results he desired to review. He says that his new request was simply denied, which was different from past years when the forensic laboratory informed him that no such evidence existed. Based on the denial of his request, the petitioner surmises that DNA evidence exists that would demonstrate his actual innocence. However, the petitioner has not offered any new evidence. The petitioner simply offers his belief that such evidence exists based on the forensics lab's refusal of his request for DNA evidence. The petitioner has not made a credible claim of actual innocence establishing that this case is the rare instance when the actual innocence exception should equitably toll the one-year period.

III.

The petition for a writ of habeas corpus was not filed within the time permitted by 28 U.S.C. § 2244(d). The petitioner has not shown that he is entitled to statutory or equitable tolling of the one-year limitations period.

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus is **DISMISSED WITH PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 10, 2017

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLYNN L. WELLS,

Petitioner,

Case Number 17-10065
Honorable David M. Lawson

v.

SHIRLEE HARRY,

Respondent.

______________________________/

ORDER DENYING MOTION FOR RECONSIDERATION

On January 9, 2017, the petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He raised 14 claims in his petition, but he did not file his petition within the one-year limitation period set out in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). 28 U.S.C. § 2244(d). On January 31, 2017, the Court entered an order requiring the petitioner to show cause why this case should not be dismissed as untimely. The petitioner responded on February 28, 2017. However, because the petitioner did not provide a good reason for not submitting his petition within the one-year statute of limitations applicable to federal habeas actions, *see* 28 U.S.C. § 2244(d)(1), and the petition was not saved by equitable tolling, the Court dismissed his petition on March 10, 2017 as untimely. On March 22, 2017, the petitioner filed a motion for reconsideration.

Motions for reconsideration may be granted pursuant to E.D. Mich. LR 7.1(h)(1) when the moving party shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(h)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted).

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"Generally . . . the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court." E.D. Mich. LR 7.1(h)(3).

The Court has reviewed the motion and finds that the petitioner has shown no palpable defect that misled the Court or the parties as to the resolution of his petition. The petitioner's primary contention is that the Court failed to address his attack on the state court's subject matter jurisdiction in the underlying criminal case. He argues that because a challenge to subject matter can be raised at any time, the AEDPA is not a bar to his challenge to the state court's subject matter jurisdiction. The petitioner appears to have confused federal court subject jurisdiction with state court subject matter jurisdiction. Federal courts are obligated to consider questions of federal subject matter jurisdiction at any time. However, a "question[] concerning a state court's subject matter jurisdiction . . . is a question of state law." *Umbarger v. Burt*, 2008 WL 3911988, at *1 (W.D. Mich. Aug. 19, 2008). Moreover, "[t]here is no exception under the AEDPA for subject matter jurisdiction claims." *Ibid.* (citing *Griffin v. Padula*, 518 F. Supp.2d 671, 677 (D.S.C. 2007) (quoting *Moore v. Ozmint*, 2006 WL 2873620, at *1 (D.S.C. Oct. 4, 2006)). Even if the state court had no subject matter jurisdiction over the petitioner's criminal case, collateral review of a state court proceeding via a petition for writ of habeas corpus must be timely under the AEDPA. Because the petitioner has not pointed to any palpable defect in the Court's decision, his motion will be denied.

Accordingly, it is **ORDERED** that the petitioner's motion for reconsideration [dkt. #11] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: April 6, 2017

APPENDIX B.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 6, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI

APPENDIX B.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLYNN L. WELLS,

Petitioner,

Case Number 17-10065
Honorable David M. Lawson

v.

SHIRLEE HARRY,

Respondent.
_______________________________/

ORDER DENYING AMENDED MOTION FOR RECONSIDERATION

On January 9, 2017, the petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He raised 14 claims in his petition, but he did not file his petition within the one-year limitation period set out in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). 28 U.S.C. § 2244(d). On January 31, 2017, the Court entered an order requiring the petitioner to show cause why this case should not be dismissed as untimely. The petitioner responded on February 28, 2017. However, because the petitioner did not provide a good reason for not submitting his petition within the one-year statute of limitations applicable to federal habeas actions, *see* 28 U.S.C. § 2244(d)(1), and the petition was not saved by equitable tolling, the Court dismissed his petition on March 10, 2017 as untimely.

On March 22, 2017, the petitioner filed a motion for reconsideration. The Court denied the motion for reconsideration on April 6, 2017. The petitioner also filed an amended motion for reconsideration on March 26, 2017, but the motion was not entered on the docket until April 12, 2017. Although the amended motion for reconsideration expands on the arguments made in the petitioner's original motion for reconsideration, in substance, the arguments are the same. The Court will therefore deny the petitioner's amended motion for reconsideration for the reasons stated in its

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April 6, 2017 order.

Motions for reconsideration may be granted pursuant to E.D. Mich. LR 7.1(h)(1) when the moving party shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(h)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted). "Generally . . . the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court." E.D. Mich. LR 7.1(h)(3).

The Court has reviewed the motion and finds that the petitioner has shown no palpable defect that misled the Court or the parties as to the resolution of his petition. The petitioner's primary contention is that the Court failed to address his attack on the state court's subject matter jurisdiction in the underlying criminal case. He argues that because a challenge to subject matter can be raised at any time, the AEDPA is not a bar to his challenge to the state court's subject matter jurisdiction. The petitioner appears to have confused federal court subject jurisdiction with state court subject matter jurisdiction. Federal courts are obligated to consider questions of federal subject matter jurisdiction at any time. However, a "question[] concerning a state court's subject matter jurisdiction . . . is a question of state law." *Umbarger v. Burt*, 2008 WL 3911988, at *1 (W.D. Mich. Aug. 19, 2008). Moreover, "[t]here is no exception under the AEDPA for subject matter jurisdiction claims." *Ibid.* (citing *Griffin v. Padula*, 518 F. Supp.2d 671, 677 (D.S.C. 2007) (quoting *Moore v. Ozmint*, 2006 WL 2873620, at *1 (D.S.C. Oct. 4, 2006)). Even if the state court had no subject matter jurisdiction over the petitioner's criminal case, collateral review of a state court proceeding via a petition for writ of habeas corpus must be timely under the AEDPA. Because the petitioner

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has not pointed to any palpable defect in the Court's decision, his motion will be denied.

Accordingly, it is **ORDERED** that the petitioner's amended motion for reconsideration [dkt. #13] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: April 13, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 13, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GLYNN L. WELLS,

Petitioner,

Case Number 17-10065
Honorable David M. Lawson

v.

SHIRLEE HARRY,

Respondent.

______________________________/

ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner Glynn L. Wells was convicted of assault with intent to murder, two counts of first-degree criminal sexual conduct, unarmed robbery, and possession of a firearm during the commission of a felony following a jury trial in the Wayne County Circuit Court. He challenged his convictions in a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petitioner raised 14 claims addressing a variety of alleged constitutional violations, but the Court found that Wells had not complied with the one-year statute of limitations applicable to federal habeas actions, *see* 28 U.S.C. § 2244(d)(1), and the petition was not saved by equitable tolling. The Court therefore dismissed the petition as untimely.

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts:

> The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts.

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A certificate of appealability 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). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, "a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The petition for a writ of habeas corpus was not filed within the time permitted by 28 U.S.C. § 2244(d), and the petitioner failed to establish that he was entitled to statutory or equitable tolling of the one-year limitations period. The Court now finds that reasonable jurists could not debate the correctness of the Court's conclusions on those points or its ruling dismissing the petition, and the Court therefore will deny a certificate of appealability.

Accordingly, it is **ORDERED** that a certificate of appealability is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 10, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 10, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI

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