

APPENDIX A

January 8, 2018 Order of the United States Court
Of Appeals for the Fifth Circuit, in Number 17-40373

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-40372



A True Copy
Certified order issued Jan 08, 2018

Jyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

GUY ANDREW INMAN, JR.,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas

ORDER:

Guy Andrew Inman, Jr., Texas prisoner # 1621918, moves for a certificate of appealability (COA) to appeal the district court's dismissal as time-barred of his 28 U.S.C. § 2254 application challenging his 2010 conviction and 30-year prison sentence for four counts of aggravated sexual assault of a child. In his counseled COA motion, Inman contends that the district court erred in failing to conduct an evidentiary hearing on the issue of equitable tolling, failing to apply equitable tolling principles in this case, and failing to adjudicate his § 2254 claims on the merits.

To obtain a COA, a prisoner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The COA applicant must demonstrate "that reasonable jurists could debate whether (or, for that

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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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). When the district court has denied relief based on procedural grounds, a COA should be granted “when the prisoner 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.” *Id.* Because Inman has not made the required showing, his motion for a COA is DENIED.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 08, 2018

Mr. David O'Toole
Eastern District of Texas, Sherman
101 E. Pecan Street
Federal Building
Room 216
Sherman, TX 75090-0000

No. 17-40372 Guy Inman, Jr. v. Lorie Davis, Director
USDC No. 4:16-CV-241

Dear Mr. O'Toole,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Angelique B. Tardie, Deputy Clerk
504-310-7715

cc w/encl:
Mr. Ashley Byron Burleson
Mr. Jon Rodney Meador

APPENDIX B

April 4, 2017 Order of Dismissal and Final Judgment of the
United States District Court for the Eastern District of Texas,
Sherman Division, in Cause No. 4:16-cv-241

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

GUY ANDREW INMAN, JR., #1621918

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:16cv241

ORDER OF DISMISSAL

Petitioner Guy Andrew Inman, Jr., an inmate confined in the Texas prison system, brings this petition for a writ of habeas corpus challenging his Collin County conviction. The cause of action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the petition should be dismissed as time-barred. Petitioner has filed objections.

On January 13, 2010, after pleas of guilty and pursuant to a plea bargain, Petitioner was sentenced to thirty (30) years of imprisonment for four counts of aggravated sexual assault of a child. He did not appeal the conviction, and it became final. More than five years later, he filed an application for a writ of habeas corpus in state court on April 13, 2015. The Texas Court of Criminal Appeals denied the application without written order on findings of the trial court without a hearing on January 13, 2016.

The present petition was filed in the Southern District of Texas on April 2, 2016. The petition was transferred to this Court on April 7, 2016. The petition contains four claims of ineffective assistance of counsel. A recommendation was made to dismiss the petition as time-barred.

Petitioner's conviction became final thirty days after he was sentenced on January 13, 2010. *Egerton v. Cockrell*, 334 F.3d 433, 435 (5th Cir. 2003); *Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir.

2000). The conviction became final on February 12, 2010. Petitioner had one year to file the present petition. 28 U.S.C. § 2244(d)(1)(A). The petition was due on February 12, 2011, in the absence of tolling provisions. It was not filed until April 2, 2016.

Petitioner filed an application for a writ of habeas corpus in state court on April 13, 2015. By then, the present petition was already time-barred by more than four years. The pendency of the state application did not effectively toll the deadline of February 12, 2011.

Petitioner's objections focus on equitable tolling. In particular, he stresses that he had serious medical problems from 2010-2014, including chronic kidney disease, congestive heart failure, coronary artery disease, diabetic mellitus, hypertension, hyperlipidemia and asthma. He had chronic kidney disease and congestive heart failure at the time he pled guilty. After his arrival at the Texas prison system, he spent considerable amount of time at the University of Texas Medical Branch in Galveston, Texas, where he had no access to a law library for inmates.

During early 2010, Petitioner contacted Tina Church, an individual who led him to believe that she was an attorney, who informed him she would assist him challenge his conviction. He later learned that she was a private investigator. On June 7, 2010, he wrote to the Actual Innocence Center at the University of Texas seeking help. He was told that he would be placed on the list for review. On December 18, 2013, he was advised that he was still on the list for review. He contacted Sam Adamo, an attorney, on February 29, 2012. Adamo accepted his case for review, but he advised Petitioner that he did not prepare writs in March 2013. Petitioner contacted current counsel on December 15, 2013. Counsel filed Petitioner's state application on April 13, 2015.

The Supreme Court held that the statute of limitations may be tolled for equitable reasons. *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 circumstances stood in his way and prevented timely filing. *Id.* at 649. “Courts must consider the individual facts and circumstances of each case in determining whether equitable tolling is appropriate.” *Mathis v. Thaler*, 616 F.3d 461, 474 (5th Cir. 2010) (citation omitted).

The individual facts of this case reveal that Petitioner made some efforts to pursue his rights, but his efforts cannot be viewed as diligent. The fact that he waited more than six years from the time he pled guilty to the time the present petition was filed simply cannot be ignored. Three years elapsed from the time he contacted the Actual Innocence Center until he wrote to them for an update. He wrote to counsel about the same time that he received the update, but an additional sixteen months elapsed before counsel filed a state application. These gaps in time must be considered in the context of the overall one year statutory deadline, and the Court cannot conclude that Petitioner pursued his rights diligently. With respect to the second prong, Petitioner had obstacles to overcome. Illness may warrant equitable tolling, but the Fifth Circuit has affirmed decisions denying equitable tolling on the basis of illness. *Jones v. Stephens*, 541 F. App’x 499, 505 (5th Cir. 2013); *Hulsey v. Thaler*, 421 F. App’x 386, 389-90 (5th Cir. 2011). Petitioner has not shown that extraordinary circumstances stood in his way and prevented timely filing. The Court is of the opinion that equitable tolling does not save the present petition.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner’s

objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court.

Accordingly, it is **ORDERED** that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are hereby **DENIED**.

SIGNED this 4th day of April, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

GUY ANDREW INMAN, JR., #1621918

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:16cv241

FINAL JUDGMENT

The court having considered Petitioner's case and rendered its decision by opinion issued this same date, it is **ORDERED** that the petition for a writ of habeas corpus is **DISMISSED** with prejudice.

SIGNED this 4th day of April, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

APPENDIX C

March 6, 2017 Report and Recommendation of United States
Magistrate Judge, in Cause No. 4:16-cv-241

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

GUY ANDREW INMAN, JR., #1621918

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:16cv241

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Guy Andrew Inman, Jr., an inmate confined at the Luther Unit of the Texas prison system, brings this petition for a writ of habeas corpus challenging his Collin County conviction pursuant to 28 U.S.C. § 2254. The petition was referred for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Background of the Case

On January 13, 2010, after pleas of guilty and pursuant to a plea bargain, Petitioner was sentenced to thirty (30) years of imprisonment for four counts of aggravated sexual assault of a child. He did not appeal the conviction.

More than five years later, on April 13, 2015, Petitioner filed an application for a writ of habeas corpus in state court. The state trial court issued findings of fact and conclusions of law. On January 13, 2016, the Texas Court of Criminal Appeals denied the application without written order on findings of the trial court without a hearing.

The petition in this case was filed in the Southern District of Texas on April 2, 2016. On April 7, 2016, the petition was transferred to this Court. The petition contains four claims of ineffective assistance of counsel.

The Director filed an answer (Dkt. #21) on September 6, 2016. He argues that the petition is time-barred and otherwise without merit.

Petitioner has not filed a response to the answer.

Discussion and Analysis

1. Statute of Limitations

On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) was signed into law. The law made several changes to the federal habeas corpus statutes, including the addition of a one year statute of limitations. 28 U.S.C. § 2244(d)(1). AEDPA provides that the one year limitations period shall run from the latest of four possible situations. Section 2244(d)(1)(A) specifies that the limitations period shall run from the date a judgment becomes final by the conclusion of direct review or the expiration of the time for seeking such review. Section 2244(d)(1)(B) specifies that the limitations period shall run from the date an impediment to filing created by the State is removed. Section 2244(d)(1)(C) specifies that the limitations period shall run from the date in which a constitutional right has been initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review. Section 2244(d)(1)(D) states that the limitation period shall run from “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” Section 2244(d)(2) also provides that 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.

In the present case, the appropriate section to employ is Section 2244(d)(1)(A). Petitioner was sentenced on January 13, 2010. He did not file a notice of appeal; thus, the conviction became final thirty days later. *Egerton v. Cockrell*, 334 F.3d 433, 435 (5th Cir. 2003); *Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir. 2000). The conviction became final on February 12, 2010. The present petition was due no later than February 12, 2011, in the absence of tolling provisions. It was not filed until April 8, 2016. The statutory tolling provisions specify that “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation.” 28 U.S.C. § 2244(d)(2). Petitioner filed his state application on April 13, 2015. By then, the present petition was already

time-barred by more than four years. The pendency of the state application did not effectively toll the statute of limitations.

Petitioner argues that he is entitled to equitable tolling. In support of the argument, he explains that he was extremely ill with kidney failure before contacting current counsel. During that period of time, he did not have access to a law library. Trial counsel would not furnish him with any trial records after repeated requests. Finally, after one and one-half years, his trial attorney advised him that he did not do writs.

The Supreme Court has decided that the AEDPA's statute of limitations may be tolled for equitable reasons. *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 circumstances stood in his way and prevented timely filing. *Id.* at 649. In the present case, Petitioner has not shown that he has been pursuing his rights diligently. Petitioner was sentenced on January 13, 2010. The present petition was filed more than five years after the conviction became final. Petitioner states it took his trial attorney one and one-half years to tell him that he did not prepare writs, but that does not explain all the other years that expired with no activity. He states that he wrote to the Texas Actual Innocence Center in June 2010, but that does not explain away all the years before he finally filed an application for a writ of habeas corpus in state court. Petitioner did not file his state application until April 13, 2015, which was more than five years after his conviction became final. Petitioner likewise failed to show that extraordinary circumstances stood in his way and prevented filing. Petitioner is not entitled to equitable tolling.

In conclusion, the present petition was filed too late. It should be dismissed as time-barred.

Certificate of Appealability

An appeal may not be taken to the court of appeals from a final order in a federal habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). Although Petitioner has not yet filed a notice of appeal, it is respectfully recommended that this Court, nonetheless, address whether he would be entitled to a certificate of

appealability. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (A district court may *sua sponte* rule on a certificate of appealability because “the district court that denies a petitioner relief is in the best position to determine whether the petitioner has made a substantial showing of a denial of a constitutional right on the issues before the court. Further briefing and argument on the very issues the court has just ruled on would be repetitious.”).

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Supreme Court fully explained the requirement associated with a “substantial showing of the denial of a constitutional right” in *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In cases where a district court rejected a petitioner’s constitutional claims on the merits, “the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.*; *Henry v. Cockrell*, 327 F.3d 429, 431 (5th Cir. 2003). “When a district court denies a habeas petition on procedural grounds without reaching the petitioner’s underlying constitutional claim, a COA 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.” *Id.*

In this case, it is respectfully recommended that reasonable jurists could not debate the denial of Petitioner’s § 2254 petition on substantive or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack*, 529 U.S. at 484). Accordingly, it is respectfully recommended that the Court find that Petitioner is not entitled to a certificate of appealability as to his claims.

Recommendation

It is recommended that the petition for a writ of habeas corpus be denied, and the case be dismissed with prejudice as time-barred. It is further recommended that a certificate of appealability be denied.

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superceded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 6th day of March, 2017.



KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE