No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

COREY BLAINE COGGINS, Petitioner

Vs.

DODGE STATE PRISON WARDEN, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE

ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

COREY BLAINE COGGINS
#1127482
DODGE STATE PRISON
2971 OLD BETHEL ROAD
CHESTER, GEORGIA 31012

INDEX OF DOCUMENTS

APPENDIX A

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-14159

COREY BLAINE COGGINS,

Petitioner-Appellant,

versus

DODGE SP WARDEN,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:24-cv-00042-JRH-BKE

ORDER:

In order to challenge the denial of his 28 U.S.C. § 2254 habeas corpus petition, Corey Coggins moves this Court for a certificate of appealability ("COA"). To obtain a COA, he must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For procedurally denied claims, he must show that reasonable jurists would debate (1) whether he alleged the denial of a constitutional right, and (2) whether the procedural ruling was correct. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), § 2254 petitions are generally governed by a one-year statute of limitations that begins to run on "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). A timely filed state post-conviction motion tolls the limitation period. *Id.* § 2244(d)(2).

Here, reasonable jurists would not debate that Mr. Coggins's § 2254 petition was untimely. His convictions became final on May 19, 2014. *Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009). Thus, he had until May 19, 2015, to file a § 2254 petition. *See* 28 U.S.C. § 2244(d)(1)(A). His timely filed July 1, 2014, state habeas corpus petition, however, tolled the federal statute of limitations until January 2, 2024. 28 U.S.C. § 2244(d)(1), (2); O.C.G.A. § 9-14-42; *Dolphy v. Warden, Cent. State Prison*, 823 F.3d 1342, 1345 (11th Cir. 2016). Because he did not file his § 2254 petition until April 5, 2024, his petition was untimely.

Reasonable jurists also would not debate that Mr. Coggins failed to establish a basis for equitable tolling. *See Holland v. Florida*, 560 U.S. 631, 649 (2010) (noting that the AEDPA's limitations period may be equitably tolled by a petitioner showing "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing."). Because he failed to argue what extraordinary circumstances prevented the timely filing of his petition, he failed to show that he was entitled to equitable tolling. *Id.*

Finally, reasonable jurists would not debate that Mr. Coggins failed to make a sufficient showing of actual innocence. *See McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) (holding that the AEDPA's limitation period may be overcome if a petitioner can establish actual innocence). In light of the other record evidence, his new evidence—recanted witness testimony and portions of his public defender's file that were not presented at trial—does not show that "it is more likely than not that no reasonable juror would have convicted" him. *See id.* at 395 (explaining that the actual innocence exception "applies to a severely confined category: cases in which new evidence shows 'it is more likely than not that no reasonable juror would have convicted the petitioner.'" (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995), alteration adopted)). Accordingly, Mr. Coggins's COA motion is DENIED.

UNITED STATES CIRCUIT JUDGE

APPENDIX B

2024 WL 4982847
Only the Westlaw citation is currently available.
United States District Court, S.D. Georgia, Augusta Division.

Corey Blaine **COGGINS**, Petitioner,
v.
Michael THOMAS, Warden, Dodge State Prison, Respondent.

CV 124-042
|
Signed November 1, 2024,

***** Start Section**
... REPORT AND RECOMMENDATION

BRIAN K. EPPS, UNITED STATES MAGISTRATE JUDGE

***1** Petitioner, through counsel, brings the above-captioned petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter is currently before the Court on Respondent's motion to dismiss the petition as untimely. For the reasons set forth below, the Court **REPORTS** and **RECOMMENDS** Respondent's motion to dismiss be **GRANTED**, (doc. no. 12), this petition be **DISMISSED** as untimely, and a final judgment be **ENTERED** in favor of Respondent.

I. Background

In March 2006, a jury in the Superior Court of Columbia County, Georgia, convicted Petitioner of malice murder and felony murder, and the trial court sentenced Petitioner to life in prison for malice murder.[1] (Doc. no. 1, p. 1; doc. no. 13-4; **Coggins** v. State, 750 S.E.2d 331 (Ga. 2013).) The Georgia Supreme Court affirmed the judgment on October 21, 2013. **Coggins**, 750 S.E.2d at 334. In its opinion, the Supreme Court provided the following summary of the evidence, viewed in the light most favorable to the jury's verdict:

> [O]n August 18, 2001, **Coggins** and two of his friends got into a fight with Smith [the victim] based on an earlier accusation by one of **Coggins**' friends, Chris Jarrard, that Smith was a police informant. Following Jarrard's initial accusation that Smith was an informant, **Coggins** affirmed to Smith repeatedly that he, too, believed that Smith was "snitching" on others. Smith was angered by the accusation, and **Coggins** took Smith to one of **Coggins**' friend's houses so that Smith could confront Jarrard about accusing him of being an informant. Smith then confronted and began fighting with one of **Coggins**' other friends, but eventually **Coggins** and Jarrard jumped into the fight as well and ganged up on Smith. During the fight, **Coggins** stabbed Smith twice in the chest, killing him.
>
> The morning after the stabbing, **Coggins** admitted to a friend that he had been involved in killing someone. A few days later, **Coggins** admitted to another friend that he had recently stabbed and killed someone. He also admitted to two inmates while he was in the Columbia County Detention Center that he had stabbed and killed Smith.

Id. at 333. Petitioner filed for a writ of certiorari to the United States Supreme Court, but the petition was denied on May 19, 2014. **Coggins** v. Georgia, 572 U.S. 1119 (2014).

Petitioner filed a *pro se* state petition for a writ of habeas corpus in the Superior Court of Macon County on July 1, 2014. (Doc. no. 1, p. 3; doc. no. 13-5.) The state habeas petition transferred twice thereafter to different Superior Courts, (doc. no. 1, p. 3), and a state habeas hearing was held on December 4, 2018, by which time Petitioner was represented by the same counsel currently representing him in these federal proceedings. (Doc. no. 14-7, p. 1.)[2] The state habeas court denied relief in a written

order filed August 19, 2019. (Doc. no. 13-13.) The Georgia Supreme Court denied a Certificate of Probable Cause to Appeal ("CPC") on January 11, 2023, (doc. no. 13-14), and after denial of a motion for reconsideration, (doc. no. 1, p. 4), the remittitur issued on February 13, 2023. (Doc. no. 13-15, Coggins v. Tatum, S20H0188 (Ga. Feb. 13, 2023).) Petitioner then filed a petition for writ of certiorari to the United States Supreme Court, but the petition was denied on October 2, 2023. (Doc. no. 13-16, Coggins v. Tatum, No. 22-7877, 144 S. Ct. 176 (U.S. Oct. 2, 2023).)

*2 Petitioner executed the instant federal habeas corpus petition on March 15, 2024, (doc. no. 1, p. 15), and counsel filed it on April 5, 2024. (Id. at 1.) He raises several claims for relief based on alleged ineffective assistance of trial and appellate counsel, violation of the principles of Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972), and violation of his due process rights based on the time lapse from conviction to the conclusion of state post-conviction proceedings. (See generally doc. nos. 1, 6.) Respondent moves to dismiss the federal petition as time-barred under 28 U.S.C. § 2244(d). (See doc. nos. 12, 12-1, 16.) Petitioner opposes the motion to...

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... 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.

Under § 2244(d)(1)(A), a judgment becomes final upon "the conclusion of direct review or the expiration of the time for seeking such review." Here, the United States Supreme Court denied the petition for a writ of certiorari on May 19, 2014, Coggins, 572 U.S. 1119, and his conviction therefore became final that day. See Jimenez v. Quarterman, 555 U.S. 113, 119 (2009) ("[T]he conclusion of direct review occurs when 'this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari.' " (citation omitted)); Torres v. Sec'y, Fla. Dep't of Corr., No. 21-14331, 2023 WL 2682116, at *4 (11th Cir. Mar. 29, 2023) (*per curiam*) ("Ordinarily, a state prisoner's conviction becomes final when the U.S. Supreme Court denies *certiorari* or issues a decision on the merits, or when the 90-day period in which to file a *certiorari* petition expires." (citing Nix v. Sec'y for Dep't of Corr., 393 F.3d 1235, 1236-37 (11th Cir. 2004))). Thus, Petitioner would have had one year from May...

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... one-year clock remained tolled throughout the habeas corpus proceedings in state court, including the time during which Petitioner sought a CPC from the Georgia Supreme Court and until issuance of that Court's remittitur on February 13, 2023, (doc. no. 13-15). See Dolphy v. Warden, Cent. State Prison, 823 F.3d 1342, 1345 (11th Cir. 2016) (*per curiam*) ("[W]hen a state habeas petitioner seeks a certificate of probable cause from the Georgia Supreme Court and the Court denies the request, the petitioner's case becomes complete when the Court issues the remittitur for the denial." (citations omitted)). However, once the remittitur issued, Petitioner filed a petition for writ of certiorari to the United States Supreme Court, which was denied on October 2, 2023. Coggins, 144 S. Ct. 176.

*3 Petitioner then waited until April 5, 2024, to file the instant federal petition, well over one year past the February 13, 2023 issuance of the remittitur for the CPC denial.[3] Petitioner incorrectly stated in his original petition that his filing was timely, (doc. no. 1, p. 13), and when faced with Respondent's motion to dismiss, Petitioner correctly concedes the untimeliness but argues his dilatoriness should be excused. (Doc. no. 14, p. 14 (acknowledging time from denial of application to appeal state habeas decision through denial of application for certiorari to United States Supreme Court counts against statute of limitations calculation but should not bar Petitioner's federal claims because "he is absolutely innocent"); see also id...

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...e, 463 U.S. 880, 887, 103 S. Ct. 3383, 77 L.Ed.2d 1090 (1983))." Raulerson v. Warden, 928 F.3d 987, 1004 (11th Cir. 2019).

1. Petitioner's Evidence

According to Petitioner, "there is overwhelming evidence that was not produced at trial that if produced no reasonable juror would have convicted [him]. Schlup v. Delo, 513 U.S. 298 (1995). This includes but is not limited to, the false testimony of Timothy Wayne Osborne (Osborne) who, unknown to [Petitioner] received a substantial benefit for his implied agreement to testify against [Petitioner]." (Doc. no. 14, p. 2.) The catch-all "includes but is not limited to" language is not specifically explained. The only straightforward statement of evidence supporting the actual innocence exception is found under the heading, "**Coggins** has met the Standard of Review by making a credible showing of actual innocence to invoke equitable tolling to the 1-year limited period under [AEDPA]."[4] (Id. at 17.) In this portion of his opposition briefing, Petitioner discusses only the alleged fabricated testimony of Osborne which he allegedly offered in exchange for a lighter sentence in a pending case against him and an undeveloped claim that after Petitioner was convicted, an "unknown person" said the "wrong man was convicted," but nothing was done to investigate his conclusory claim.[5] (Doc. no. 14, pp. 17-19.) As there are no details offered in support of this post-conviction revelation, it obviously fails to satisfy the stringent requirement of offering new evidence, let alone that this...

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... innocence to overcome a time bar"), *adopted by* 2018 WL 1865168 (M.D. Ala. Apr. 18, 2018).

*9 When assessing the impact of a Brady violation, the Court should not simply disregard the testimony that should have been impeached and determine whether a jury would have convicted Petitioner without that testimony. Instead, the Court must assess what the jury would have done "in light of the new evidence." Schlup, 513 U.S. at 327; Rozzelle, 672 F.3d at 1011. In other words, had the allegedly improperly withheld Brady evidence been used to impeach Osborne at trial, would no reasonable juror likely have convicted Petitioner? The answer here is no.

As set forth above in Part I, the Georgia Supreme Court found numerous pieces of evidence in support of the jury's verdict. **Coggins**, 750 S.E.2d at 332-33. Despite Petitioner's adamant contention the Georgia Supreme Court factual recitation should be discounted because it is based on "unauthorized *in judicio* admissions made by" Petitioner's appellate counsel, as demonstrated by Respondent's recitation, complete with record citations, (doc. no. 16, pp. 13-14), there is evidence from multiple trial witnesses other than Osborne supporting the jury's guilty verdict.[9] Moreover, Weber cross-examined Osborne about trading his testimony for a benefit, (doc. no. 14-10, pp. 149-10), the letter including Osborne's boast of wanting to trade his testimony went to the jury, (doc. no. 14-11, p. 180), and the jury heard from Petitioner himself that he never discussed his case with Osborne, (doc. no....

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... that would satisfy the high burden to establish that this is the rare case where no reasonable fact finder could have found him guilty of the murder for which he was convicted. See McQuiggin, 569 U.S. at 386; Ray, 272 F. App'x at 810-11. Thus, the fundamental miscarriage of justice exception does not save the untimely petition from dismissal.

IV. Conclusion

*13 For the reasons set forth above, the Court **REPORTS** and **RECOMMENDS** Respondent's motion to dismiss be **GRANTED**, (doc. no. 12), this petition be **DISMISSED** as untimely, and a final judgment be **ENTERED** in favor of Respondent.

SO REPORTED and RECOMMENDED this 1st day of November, 2024, at Augusta, Georgia.

All Citations

Slip Copy, 2024 WL 4982847

Footnotes

1 By operation of law, the felony murder conviction was vacated. Coggins, 750 S.E.2d at 332 n.1.

2 For uniformity and ease of reference, throughout the Report and Recommendation, the Court cites to the document and page numbers as assigned by the Court's electronic filing system at the top of each page.

3 The prison mailbox rule" requires the Court to presume the date of filing is the date a prisoner executes the petition and delivers it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 275-76 (1988); Daniels v. United States, 809 F.3d 588, 589 (11th Cir. 2015) (*per curiam*). Here, however, Petitioner is represented by counsel. Yet, even if the Court were to apply the date Petitioner signed the petition, March 15, 2024, prior to returning it to counsel for filing on April 5, the petition is still untimely.

4 Petitioner confusingly uses equitable tolling terminology in his argument for an actual innocence exception. They are two different concepts. See McQuiggin, 569 U.S. at 392 (explaining difference between actual innocence *exception* to one-year statute of limitation and equitable tolling *extension* of time statutorily prescribed for filing). As explained in Part III(A), Petitioner is not entitled to the application of equitable tolling.

5 Indeed, the email regarding this claim provides no details to support the assertion that "the wrong man" was convicted, the wife of the victim knows who the actual killer is, and she lied to the police about what she knew. (See doc. no. 14-7, pp. 130-31.)

6 As discussed in more detail in Part III(B)(2) below, Michael Robinson was confined at the Columbia County Detention Center at the same time as Petitioner and Osborne, and wrote a letter exhibited at trial mirroring similar facts as those presented in Osborne's letters regarding Petitioner's inculpatory statements to him about the murder for which Petitioner was convicted. (Doc. no. 14-10, pp. 121, 127-31, 133-36 ; doc. no. 14-11, p. 144 (State's Ex. 22).)

7 The index to the Public Defender's file and select pages of it are attached to Petitioner's opposition to the motion to dismiss. (Doc. no. 14-2, pp. 22-80.)

8 The state habeas court also considered and rejected Petitioner's claim the State failed to reveal an implied deal with Osborne to obtain his trial testimony. (Doc. no. 13-13, pp. 8-10.) Although Petitioner spends much of his briefing arguing why the state habeas court was wrong, the *merits* of the federal petition are not currently before the Court. Rather, the Court is only determining whether the actual innocence exception should allow for consideration of the otherwise untimely petition. As discussed above, the alleged Brady violation is insufficient to meet Petitioner's high burden.

9 The evidence from these multiple witnesses is discussed in more detail in Part III(B)(2)(b) & (3), below. That Petitioner now contests his appellate counsel's presentation of the documented trial evidence does not alter the actual innocence exception analysis. That is, conflicting testimony, even without Osborne's challenged testimony, does not establish no reasonable juror would have convicted Petitioner. See Rozzelle, 672 F.3d at 1016-17; Kuenzel, 880 F. Supp.2d at 1178, 1179; Rivera, 2017 WL 6035017, at *12.

10 Petitioner makes much of the fact that Weber should have known Osborne's testimony was false because the standard jail policy of not housing co-defendants together meant Osborne could not have spoken with both Tabor and Petitioner. (Doc. no. 14, p. 18; doc. no. 18, p. 13.) Aside from improperly arguing the merits of an ineffective assistance claim as

support for the actual innocence exception, the state habeas court considered and rejected the argument it would have been impossible for Osborne to speak with Tabor and Petitioner. (Doc. no. 13-13, pp. 5-8.)

11 Although Petitioner's counsel has confusingly co-mingled arguments on the merits of his federal petition with the terminology that he is "truly innocent of this crime," (doc. no. 18, p. 19), the most telling aspect of Petitioner's briefing is the repeated concession that the Public Defender's file contained the information Petitioner now relies upon in an attempt to excuse his untimeliness, but trial counsel failed to utilize it. (See, e.g., doc. no. 14, p. 8 (detailing evidence in Public Defender's file which was not presented at trial); id. at 9 (challenging state habeas decision that trial counsel did not provide ineffective assistance for failing to investigate facts or call witnesses to refute trial testimony regarding Petitioner's "alleged admission" of killing victim because trial counsel "had all of this information in the Public Defender's file").

12 In addition to the record citations, these facts were also acknowledged by the Georgia Supreme Court, **Coggins**, 750 S.E.2d at 333, and cited in Respondent's motion to dismiss briefing, (doc. no. 16, pp. 13-14).

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2024 WL 4982830
Only the Westlaw citation is currently available.
United States District Court, S.D. Georgia, Augusta Division.

Corey Blaine COGGINS, Petitioner,
v.
Michael THOMAS, Warden, Dodge State Prison, Respondent.

CV 124-042
|
Signed December 4, 2024

Attorneys and Law Firms

John B. Long, Tucker, Long, PC, Augusta, GA, for Petitioner.

Meghan H. Hill, Department of Law - 03, Atlanta, GA, Michael A. Oldham, Georgia Department of Law, Atlanta, GA, for Respondent.

ORDER

J. RANDAL HALL, UNITED STATES DISTRICT JUDGE

***1** After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed. (Doc. no. 21.) Petitioner does not offer any new facts or arguments that warrant deviating from the Magistrate Judge's recommendation to dismiss the petition as untimely. Rather, the objections continue the pattern in Petitioner's opposition to the motion to dismiss of attempting to argue the merits of the untimely federal claims without first satisfying the demanding requirements of the "exceedingly narrow in scope" actual innocence gateway exception. San Martin v. McNeil, 633 F.3d 1257, 1268 (11th Cir. 2011) (citations omitted). For example, Petitioner asks the Court to address the merits of an untimely ineffective assistance claim regarding an allegedly improper joint defense agreement "[i]n order to demonstrate that [he] is actually innocent." (Doc. no. 21, p. 3.) However, the task currently before the Court is to determine whether the actual innocence exception should allow for consideration of the otherwise untimely petition, not rule on the performance of trial counsel in the first instance.

The well-settled case law requires that Petitioner's effort to pass through the actual innocence gateway be supported "with new reliable evidence - whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence - that was not presented at trial." Schlup v. Delo, 513 U.S. 298, 324 (1995); see also Calderon v. Thompson, 523 U.S. 538, 559 (1998) (recognizing the actual innocence gateway standard is narrow and demanding, and "in virtually every case, the allegation of actual innocence has been summarily rejected." (citation omitted)). Petitioner has not met his heavy burden to pass through the gateway, as explained in the Magistrate Judge's thorough evaluation of the record. In sum, Petitioner has not established - either by way of legal argument or presentation of conflicting facts - "that in light of the new evidence, no juror, acting reasonably, would have voted to find [Petitioner] guilty beyond a reasonable doubt." McQuiggin v. Perkins, 569 U.S. 383, 386 (2013) (citations omitted): see also Rivera v. Humphrey, No. CV 113-161, 2017 WL 6035017, at *10 (S.D. Ga. Dec. 6, 2017) ("This 'new' evidence must do more than counterbalance the evidence that sustained the petitioner's conviction. [It] must be so significant and reliable that, considered with the trial record as a whole, it undermines confidence in the result of the trial" and shows "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." (citation omitted)).

Accordingly, the Court **OVERRULES** all objections, **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **GRANTS** Respondent's motion to dismiss, (doc. no. 12), and **DISMISSES** the instant petition, brought pursuant to 28 U.S.C. § 2254, as untimely.

Further, a prisoner seeking relief under § 2254 must obtain a certificate of appealability ("COA") before appealing the denial of his application for a writ of habeas corpus. This Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) to the Rules Governing Section 2254 Proceedings. This Court should grant a COA only if the prisoner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in Slack v. McDaniel, 529 U.S. 473, 482-84 (2000), Petitioner has failed to make the requisite showing. Accordingly, the Court **DENIES** a COA in this case. [1] Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith, and Petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

***2** Upon the foregoing, the Court **CLOSES** this civil action and **DIRECTS** the Clerk to enter final judgment in favor of Respondent.

SO ORDERED this 4th day of December, 2024, at Augusta, Georgia.

All Citations

Slip Copy, 2024 WL 4982830

Footnotes

1 "If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Rule 11(a) to the Rules Governing Section 2254 Proceedings.

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