

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-3454

Jean-Michael Kisi

Appellant

v.

Joseph Joyce, Warden, North Dakota State Penitentiary

Appellee

Appeal from U.S. District Court for the District of North Dakota - Western
(1:24-cv-00092-CRH)

ORDER

The petition for rehearing by the panel is denied.

March 20, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

e.g., Appendix A

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Plaintiff - Appellant

v.

Joseph Joyce, Warden, North Dakota State Penitentiary

Defendant - Appellee

Appeal from U.S. District Court for the District of North Dakota - Western
(1:24-cv-00092-CRH)

JUDGMENT

Before BENTON, KELLY, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. Appellant's motion for leave to proceed on appeal in forma pauperis is denied as moot. The appeal is dismissed.

February 10, 2025

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

e.g., Appendix B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Jean-Michael Kisi,)	
)	
Petitioner,)	ORDER
)	
vs.)	Case No. 1:24-cv-92
)	
Joseph Joyce, Warden of North)	
Dakota State Penitentiary,)	
)	
Respondent.)	

Petitioner, Jean-Michael Kisi ("Kisi"), filed a Petition for Habeas Corpus Relief under 28 U.S.C. § 2254 ("Petition"). (Doc. No. 1). Respondent, Joseph Joyce ("Joyce"), Warden of the North Dakota State Penitentiary seeks dismissal of the Petition based on untimeliness. (Doc. No. 7). The parties have consented to the of jurisdiction of a magistrate judge. (Doc. Nos. 6, 11). For the following reasons, Respondent's Motion to Dismiss is **GRANTED** and Kisi's Petition is **DISMISSED**.

I. BACKGROUND

On November 25, 2015, Kisi was charged with gross sexual imposition, criminal conspiracy, conspiracy to commit murder, and accomplice to attempted murder in Williams County District Court, State of North Dakota. (Doc. No. 8-1 at 1-2). After a jury trial, Kisi was found guilty of gross sexual imposition and accomplice to attempted murder. Id. at 8. On October 12, 2017, Kisi was sentenced to a term of 35 years imprisonment with 10 years suspended for gross sexual imposition and a concurrent term of 20 years for accomplice. (Doc. No. 8-2). The North Dakota Supreme Court summarily affirmed Kisi's convictions on July 11, 2018. North Dakota v. Kisi, 2018 ND 147, 913 N.W.2d 767. Kisi is currently incarcerated at the North Dakota State Penitentiary.

In his Petition, Kisi alleges a Sixth Amendment violation of his right to be present at trial and a Fourteenth Amendment violation of the right to a fair trial. (Doc. No. 1 at 5). Respondent moves for dismissal arguing the Petition was filed beyond the one-year statute of limitations. (Doc. Nos. 7, 8). Kisi did not respond to the motion to dismiss and his time to do so has expired.¹

II. LAW AND DISCUSSION

The Antiterrorism and Effective Death Penalty Act (“AEDPA”) imposes a one-year statute of limitations for filing a federal habeas petition by a person in state custody. 28 U.S.C. § 2244(d)(1). In most instances, the limitation period runs from “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” *Id.* § 2244(d)(1)(A). Other alternatives for commencing the limitations period include: the date on which a state created impediment to filing the petition is removed; the date on which a constitutional right was initially recognized by the Supreme Court and made retroactively applicable on collateral review; and the date on which the factual predicate of the claim could have been discovered using due diligence. *Id.* § 2244(d)(1)(B)–(D). The one-year limitation period begins to run from the later of any of those triggering events. *Id.*

Joyce argues Kisi’s Petition was made too late because it was filed more than one year after Kisi’s criminal judgment became final as provided in subsection (A) of § 2244(d)(1). (Doc. No. 7 at 1-2; Doc. No. 8 at 3). Subsections (B), (C), and (D) of § 2244(d)(1) do not apply. Thus, to be timely, Kisi’s Petition must have been filed within one year of the date 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).

¹ Under Local Civil Rule 7.1(F), Kisi’s failure to respond “may be deemed an admission that the motion is well taken.”

A jury found Kisi guilty of gross sexual imposition and accomplice to attempted murder. (Doc. No. 8-2). He was sentenced on October 12, 2017. Id. Kisi appealed his convictions to the North Dakota Supreme Court challenging the sufficiency of the evidence. (See Doc. No. 8-3). The North Dakota Supreme Court affirmed his conviction on July 11, 2018. North Dakota v. Kisi, 2018 ND 147, 913 N.W.2d 767. (See also Doc. No. 8-4). Kisi did not file a petition for writ of certiorari to the United States Supreme Court. Thus, Kisi's conviction became final on October 9, 2018, when the 90-days allowed to file a petition for writ expired. See Sup. Ct. R. 13(1).

Kisi's federal habeas clock began running on October 9, 2018 and expired one-year later on October 9, 2019. The Petition was filed on May 10, 2024. Kisi has not argued, and the Court has not discerned any extraordinary circumstances that justify the application of equitable tolling.² Maghee v. Ault, 410 F.3d 473, 476 (8th Cir. 2005) (“[e]quitable tolling is an exceedingly narrow window of relief.”). Kisi's Petition filed on May 10, 2024 is untimely and must be denied.³

III. CONCLUSION

The Court has carefully reviewed the entire record, the parties' filings, and the relevant case law. Kisi's Petition Under 28 U.S.C. Section 2254 for Writ of Habeas Corpus was filed more than one year after his judgment of conviction became final and is untimely. The Respondent's Motion to Dismiss (Doc. No. 7) is **GRANTED**. The Petition Under 28 U.S.C. Section 2254 for

² “A petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” Holland v. Florida, 560 U.S. 631, 649 (2010).

³ The Court notes the time a state post-conviction application is pending does not count toward AEDPA's one-year limitation period. See 28 U.S.C. § 2244(d)(2). Kisi filed a post-conviction relief application in state on May 21, 2020. Section 2244(d)(2) has no application here because the one-year period to file for habeas corpus relief expired *before* Kisi sought collateral relief in state court.

Writ of Habeas Corpus (Doc. No. 1) is **DISMISSED**. The Motion for Extension of Time to Answer is moot (Doc. No. 9).

It is further **ORDERED**:

1. The Court finds that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*;

2. Based upon the entire record before the Court, dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. See Tiedeman v. Benson, 122 F.3d 518, 520-22 (8th Cir. 1997) (finding that a district court possesses the authority to issue certificates of appealability under Section 2253(c)). If the petitioner desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedeman v. Benson, 122 F.3d 518 (8th Cir. 1997).

IT IS SO ORDERED.

Dated this 24th day of September, 2024.

/s/ Clare R. Hochhalter
Clare R. Hochhalter, Magistrate Judge
United States District Court