

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

BOBBY RAY PARKER,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

Exhibit A

DISTRICT COURT
FTB

CF-1993-912

FEB 23 2023

Judge Moody

DON NEWBERY, Court Clerk
STATE OF OKLAHOMA TULSA COUNTY

**ORDER DISMISSING PETITIONER'S APPLICATION FOR POST-CONVICTION
RELIEF**

Petitioner's Application for Post-Conviction Relief comes before this Court for consideration under the Post-Conviction Procedure Act, 22 O.S. §§ 1080-1089. This Court has reviewed the Application, the State's Response, and the records in rendering its decision. This Court finds that the Application fails to present any issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony; this matter can be decided on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, ¶ 10, 823 P.2d 370, 373-74. Also, this Court finds it unnecessary to appoint counsel for Petitioner. *See* 22 O.S. § 1082.

STATEMENT OF RELEVANT FACTS

On November 3, 1993, a jury convicted Petitioner of two counts of Robbery with Firearms. The jury sentenced Petitioner to 45 years imprisonment on Count 1 and 90 years imprisonment on Count 2. The District Court sentenced Petitioner accordingly, electing to run the sentences consecutively. The Oklahoma Court of Criminal Appeals affirmed Petitioner's judgment and sentence in 1996. Petitioner has requested post-conviction relief in 1999 and 2002, both of which were denied. Petitioner now presents his Third Application for Post-Conviction Relief filed on January 11, 2023.

Exhibit A, p. 1 of 5

Exhibit A, p. 1 of 5

ARGUMENT AND AUTHORITY

Oklahoma's Post-Conviction Procedure Act, 22 O.S. § 1080-1089, provides that the District Court may dismiss an application when it is satisfied "on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings." 22 O.S. § 1083(B). Accordingly, dismissal on the pleadings is improper where there exists a material issue of fact. *Id.* So, as in the case at bar, where a Petitioner fails to state a meritorious claim for relief and fails to present any material fact for this Court to consider, it should dismiss the application. Petitioner's Application is fit for dismissal.

I. PETITIONER'S CLAIMS ARE PROHIBITED BY 22 O.S. § 1080.1.

The Oklahoma Legislature has limited post-conviction relief under the Post-Conviction Procedure Act available to petitioners. Under 22 O.S. § 1080.1, petitioners have *one year* to initiate claims for post-conviction relief, and that timeline is calculated based upon the following:

A. A one-year period of limitation shall apply to the filing of any application for post-conviction relief, whether an original application or a subsequent application. The limitation period shall run from the latest of:

1. The date on which the judgment of conviction or revocation of suspended sentence became final by the conclusion of direct review by the Oklahoma Court of Criminal Appeals or the expiration of the time for seeking such review by the Oklahoma Court of Criminal Appeals;
2. The date on which the Governor revoked parole or conditional release, if the petitioner is challenging the lawfulness of said revocation;
3. The date on which any impediment to filing an application created by a state actor in violation of the Constitution of the United States or the Constitution of the State of Oklahoma, or laws of the State of Oklahoma, is removed, if the petitioner was prevented from filing by such action;

Exhibit A, p. 2 of 5

4. The date on which the constitutional right asserted was initially recognized by the United States Supreme Court, if the right has been newly recognized by the United States Supreme Court and made retroactively applicable to cases on collateral review; or

5. The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

B. Subject to the exceptions provided for in this section, this limitation period shall apply irrespective of the nature of the claims raised in the application and shall include jurisdictional claims that the trial court lacked subject-matter jurisdiction.

C. The provisions of this section shall apply to any post-conviction application filed on or after the effective date of this act.

22 O.S. § 1080.1 (effective Nov. 1, 2022). Petitioner's judgment and sentence became final when the OCCA affirmed his judgment and sentences in 1996. Petitioner's current Application is prohibited under 22 O.S. 1080.1, and the Court dismisses his current Application on this basis.

II. PETITIONER'S CLAIM IS PROCEDURALLY BARRED.

Oklahoma's Post-Conviction Procedure Act "provides petitioners with very limited grounds upon which to base a collateral attack on their judgments." *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973. The Post-Conviction Procedure Act is not intended to provide a second appeal. *Richie v. State*, 1998 OK CR 26, 957 P.2d 1192. Accordingly, "[i]t is not the office of the Post-Conviction Procedure Act, 22 O.S.1991, § 1080 *et seq.* to provide a second appeal under the mask of post-conviction application." *Thomas v. State*, 1994 OK CR 85, 888 P.2d 522, 525.

Finality of judgments is of the utmost importance in the post-conviction posture and should be stressed accordingly:

We will narrowly construe these amendments in accordance with the legislature's intent to honor the principle of finality of judgment. The Post-Conviction Procedure Act is not intended to provide a second appeal. We will consider neither issues raised on direct appeal and therefore barred by *res judicata*, nor issues waived because they could have been raised on direct appeal but were not.

Exhibit A, p. 3 of 5

Exhibit A, p. 3 of 5

Cannon v. State, 1997 OK CR 13, 933 P.2d 926, 928. This commandment is embodied in the Post-Conviction Procedure Act: "All grounds for relief available to the application under this act must be raised in the original, supplemental or amended application." 22 O.S. § 1086. The doctrine of *res judicata* procedurally bars issues which were already raised and ruled upon; the doctrine of waiver bars issues which could have been raised on review, but were not. *Id. King v. State*, 2001 OK CR 22, ¶ 4, 29 P.3d 1089, 1090 (noting that petitioner's claims should have been raised prior to his guilty plea, but most certainly in a direct appeal, and, therefore, his claims were barred). See also *Webb v. State*, 1992 OK CR 38, ¶ 6, 835 P.2d 115, 116, overruled on other grounds (holding that petitioner's third attorney was procedurally barred from raising an ineffective assistance claim in petitioner's *second* application for post-conviction relief).

The Legislature has provided a narrow exception, allowing for subsequent applications when there exists a "sufficient reason" why the grounds for relief were not asserted or inadequately asserted in the prior application. 22 O.S. § 1086. Thus, analysis turns to whether there exists a sufficient reason for not raising them or inadequately raising them in his previous application. Petitioner makes no showing whatsoever. The Application consequently fails to advance any reason indicating how his claims were inadequately raised in his prior direct appeal and/or in prior applications; Petitioner fails to overcome the procedural bar imposed by 22 O.S. § 1086. Therefore, the Court dismisses Petitioner's Application on this basis as well.

CONCLUSION

Petitioner's claims are both fit for dismissal under 22 O.S. § 1080.1 and procedurally barred under 22 O.S. § 1086. The Court dismisses the Petitioner's Application for Post-Conviction Relief.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Application for Post-Conviction Relief is hereby **DENIED**.

Exhibit A, p. 4 of 5

Exhibit A, p. 4 of 5

We review the district court's determination for an abuse of discretion. *State ex rel. Smith v. Neuwirth*, 2014 OK CR 16, ¶ 12, 337 P.3d 763, 766. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

The Post-Conviction Procedure Act is not a substitute for a direct appeal, nor is it intended as a means of providing a petitioner with a second direct appeal. *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569; *Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774, 775. A claim which could have been raised on direct appeal, but was not, is waived. *Fowler*, 1995 OK CR 29 at ¶ 2, 896 P.2d at 569; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384-85; *Johnson v. State*, 1991 OK CR 124, ¶ 4, 823 P.2d 370, 372. Claims which were raised and addressed in previous appeals are barred as *res judicata*. *Fowler*, 1995 OK CR 29 at ¶ 2, 896 P.2d at 569; *Walker v. State*, 1992 OK CR 10, ¶ 6, 826 P.2d 1002, 1004.

Reviewable issues in a subsequent application are strictly conscribed. 22 O.S.2011, § 1086; *Stevens v. State*, 2018 OK CR 11, ¶

Exhibit B, p. 2 of 4

Exhibit B, p. 2 of 4

15, 422 P.3d 741, 746 ("There are even fewer grounds available to a petitioner to assert in a subsequent application for post-conviction relief."). The claims presented in the instant application either were, or could have been, presented on direct appeal or in Petitioner's previous post-conviction applications. As the District Court found, Petitioner has not demonstrated a sufficient reason for failing to adequately raise these claims in prior proceedings. See 22 O.S.2011, § 1086. Accordingly, the claims have been waived or are barred by res judicata.

Because Petitioner has failed to establish entitlement to post-conviction relief, the order of the District Court of Tulsa County in Case No. CF-1993-912 denying his third application for post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *supra*, the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

Exhibit B, p. 3 of 4

Exhibit B, p. 3 of 4

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

3rd day of May, 2023.

Scott Rowland
SCOTT ROWLAND, Presiding Judge

Robert L. Hudson

ROBERT L. HUDSON, Vice Presiding Judge

Gary L. Lumpkin

GARY L. LUMPKIN, Judge

David B. Lewis

DAVID B. LEWIS, Judge

William J. Musseman

WILLIAM J. MUSSEMAN, Judge

ATTEST:

John D. Hadden

Clerk

PA

Exhibit B, p. 4 of 4

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BOBBY RAY PARKER,

Petitioner,

v.

RANDY HARDING,¹

Respondent.

Case No. 23-CV-0355-CVE-JFJ

Exhibit C, p. 1 of 7

OPINION AND ORDER

Petitioner Bobby Ray Parker, a state prisoner appearing pro se, brings this action pursuant to 28 U.S.C. § 2254, seeking federal habeas relief from the judgment entered against him in the District Court of Tulsa County, Case No. CF-1993-912. Respondent Randy Harding has moved to dismiss the petition, arguing that Parker failed to file it within the one-year statute of limitations prescribed in 28 U.S.C. § 2244(d)(1). Having considered the petition (Dkt. # 1), respondent's motion to dismiss (Dkt. # 9) and brief in support (Dkt. # 10), and Parker's response in opposition to the motion (Dkt. # 12), the Court grants respondent's motion and dismisses the petition with prejudice, as barred by the one-year statute of limitations.

I. BACKGROUND

Parker was convicted by a jury on November 3, 1993, on two counts of robbery with a firearm, in violation of OKLA. STAT. tit. 21, § 801. Dkt. # 10-1, at 1; Dkt. # 10-4, at 2.² The state district court sentenced Parker to forty-five years of imprisonment for count 1 and ninety years of

¹ Parker presently is incarcerated at the Dick Conner Correctional Center, in Hominy, Oklahoma. The Court therefore substitutes Dick Conner Correctional Center's current warden, Randy Harding, in the place of David Buss, as party respondent. See Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts.

² The Court's citations refer to the CM/ECF header pagination.

Exhibit C, p. 1 of 7

Front and Back

imprisonment for count 2. Dkt. # 10-1, at 1. Parker directly appealed his conviction and sentence, and the Oklahoma Court of Criminal Appeals (“OCCA”) affirmed on October 20, 1995. Id. Parker then filed an application for postconviction relief on June 28, 1999, which the state district court denied on August 20, 1999. Dkt. # 10-7; Dkt. # 10-8. Parker appealed the decision, but his petition in error was untimely and the OCCA therefore declined jurisdiction. Dkt. # 10-9. Parker applied for an out-of-time appeal to the denial of his application for postconviction relief, but this effort was likewise unsuccessful. Dkt. # 10-10; Dkt. # 10-11. Over two decades later, on January 11, 2023, Parker again sought postconviction relief. Dkt. # 10-16. The state district court dismissed the application on the bases that it was both time barred and procedurally barred, and the OCCA affirmed the decision on June 7, 2023. Dkt. # 10-17; Dkt. # 10-18.

Parker filed his federal habeas petition on August 16, 2023, alleging that (1) he was denied his right to trial counsel, (2) he was denied a fair trial because the prosecutor withheld exculpatory security camera footage in violation of Brady v. Maryland, 373 U.S. 83 (1963), (3) he was subject to a warrantless search and seizure, and the trial court therefore lacked jurisdiction, and (4) he received ineffective assistance of appellate counsel. Dkt. # 1, at 5, 7, 8, 10, 16-31.

II. DISCUSSION

Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), state prisoners have one year from the latest of four triggering events in which to file a federal habeas petition. 28 U.S.C. § 2244(d)(1). These events include:

Exhibit C, p. 2 of 7

Front and Back

("[N]o language in § 2244(d)(1)(A)—or any other provision of § 2244(d)(1)—supports that the one-year statute of limitations does not apply to judgments that are allegedly 'void' for lack of jurisdiction.").

a. The Applicable Commencement Date

Parker does not expressly invoke 28 U.S.C. § 2244(d)(1)(B), (C), or (D), and his allegations fail to demonstrate entitlement to a commencement date under these provisions.⁴ Under § 2244(d)(1)(A), the limitations period generally runs from the date on which the judgment became final. When, however, a conviction became final prior to the AEDPA's enactment, the one-year limitation period begins to run on the AEDPA's effective date, April 24, 1996. Fisher v. Gibson, 262 F.3d 1135, 1142 (10th Cir. 2001). In this case, the OCCA affirmed Parker's convictions and sentences on October 20, 1995. His convictions became final on January 18, 1996, upon the expiration of his time to seek a writ of certiorari from the United States Supreme Court. See Caspari v. Bohlen, 510 U.S. 383, 390 (1994) (discussing finality of state court judgment when no petition for writ of certiorari is filed); Sup. Ct. R. 13.1 (providing ninety days to file petition for writ of certiorari). Because this date precedes the AEDPA's effective date, Parker's one-year limitation period began to run on April 24, 1996, and expired on April 24, 1997. Parker's August

Exhibit C, p. 4 of 7

Exhibit C, p. 4 of 7

⁴ In support of his Brady claim, Parker alleges that the state suppressed exculpatory security camera footage. Dkt. # 1, at 7. Parker does not, however, argue that his discovery of the alleged evidence suppression implicates § 2244(d)(1)(D). Nor does he provide the date on which the discovery occurred. See Dkt. # 1, at 7, 21-22. Accordingly, the Court cannot conclude that § 2244(d)(1)(D) governs the timeliness of Parker's action. See Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005) (explaining that, while courts must liberally construe pro se litigants' pleadings, courts "cannot take on the responsibility of serving as the litigant's attorney in construing arguments and searching the record").

(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; [and]

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1)(A)-(D). The one-year limitations period generally runs from the date the judgment became “final” under § 2244(d)(1)(A), unless a petitioner alleges facts that implicate § 2244(d)(1)(B), (C), or (D). See Preston v. Gibson, 234 F.3d 1118, 1120 (10th Cir. 2000).

Parker contends that § 2244(d)(1) does not bar his petition because “[he] suffered structural error, jurisdictional defect, and [a] void judgment by being forced to proceed pro se,” and these “errors require automatic reversal.” Dkt. # 1, at 13; see Dkt. # 12, at 1-3. Claims that a judgment was imposed without proper jurisdiction, however, are not exempt from the AEDPA’s one-year statute of limitations. See Pacheco v. El Habti, 62 F.4th 1233, 1245 (10th Cir. 2023) (“When Congress enacted the limitations period in AEDPA, it discerned no reason to provide a blanket exception for jurisdictional claims.”); Murrell v. Crow, 793 F. App’x 675, 679 (10th Cir. 2019) (holding that, “as with any other habeas claim,” the petitioner’s claim that the trial court lacked jurisdiction to accept his plea was “subject to dismissal for untimeliness” (alteration and internal quotation marks omitted)).³ The plain language of § 2244(d) makes no exception for the infirmities Parker alleges. See Owens v. Whitten, 637 F. Supp. 3d 1245, 1251 (N.D. Okla. 2022)

³ The Court cites all unpublished decisions herein as persuasive authority. FED. R. APP. P. 32.1(a); 10th Cir. R. 32.1(A).

Exhibit C, p. 3 of 7

Exhibit C, p. 3 of 7

Front and Back

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). Though Parker alleges the existence of exculpatory security camera footage in support of his Brady claim, he does not expressly invoke the doctrine of actual innocence as a means of overcoming the AEDPA’s statute of limitations. Nor has Parker presented the purported evidence to the Court. Parker’s unsupported assertions regarding the existence of allegedly exculpatory evidence are insufficient to demonstrate a fundamental miscarriage of justice and excuse his failure to timely file his petition. See Bohon v. Oklahoma, 313 F. App’x 82, 84 (10th Cir. 2008) (noting that habeas petitioner “relie[d] on vague and conclusory statements and on excerpts from the trial transcript to support his assertion of actual innocence” and concluding the assertion of actual innocence was “unsupported by any new reliable evidence”).

III. CONCLUSION

Based on the foregoing, the Court grants respondent’s dismissal motion (Dkt. # 9) and dismisses the petition, with prejudice, as barred by the one-year statute of limitations. In addition, the Court declines to issue a certificate of appealability because the Court finds that no reasonable jurists would debate the procedural dismissal of the petition on statute-of-limitations grounds. 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. the Clerk of Court shall note on the record the substitution of Randy Harding in place of David Buss as party respondent;

Exhibit C, p. 6 of 7

Exhibit C, p. 6 of 7

16, 2023, petition therefore is untimely absent statutory or equitable tolling or a showing of actual innocence.

b. Statutory and Equitable Tolling

Under 28 U.S.C. § 2244(d)(2), the limitation period is statutorily tolled during the pendency of any “properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim.” 28 U.S.C. § 2244(d)(2). This statutory tolling provision, however, does not apply to state petitions for postconviction relief filed beyond the one-year limitation period prescribed by the AEDPA. Clark v. Oklahoma, 468 F.3d 711, 714 (10th Cir. 2006). Parker’s applications for postconviction relief were filed after April 24, 1997. Accordingly, his postconviction proceedings do not serve to toll the limitation period.

While the one-year statute of limitations also may be subject to equitable tolling, equitable tolling “is only available when an inmate diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control.” Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000). Parker has not argued that he is entitled to equitable tolling, and the record before the Court does not demonstrate such entitlement. See Yang v. Archuleta, 525 F.3d 925, 928 (10th Cir. 2008) (“An inmate bears a strong burden to show specific facts to support his claim of extraordinary circumstances and due diligence.” (alteration omitted) (quoting Brown v. Barrow, 512 F.3d 1304, 1307 (11th Cir. 2008))).

c. Actual Innocence Exception

“[A]ctual innocence, if proved, serves as a gateway through which a petitioner may pass” despite the “expiration of the statute of limitations.” McQuiggin v. Perkins, 569 U.S. 383, 386 (2013). This equitable exception, however, applies “to a severely confined category.” Id. at 395. To prevail, the petitioner must “support his allegations of constitutional error with new reliable

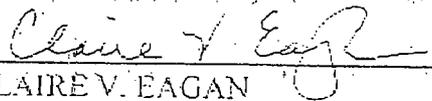
Exhibit C, p. 5 of 7

Exhibit C, p. 5 of 7

Front and Back

2. respondent's motion to dismiss (Dkt. # 9) is **granted**;
3. the petition for writ of habeas corpus (Dkt. # 1) is **dismissed with prejudice** as barred by 28 U.S.C. § 2244(d)(1)'s one-year statute of limitations;
4. a certificate of appealability is **denied**; and
5. a separate judgment of dismissal shall be entered in this matter.

DATED this 14th day of June, 2024.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

Exhibit C, p. 7 of 7

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BOBBY RAY PARKER,)
)
 Petitioner,)
)
 v.)
)
 RANDY HARDING,)
)
 Respondent.)

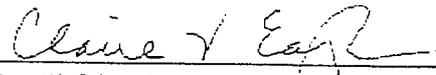
Case No. 23-CV-0355-CVE-JFJ

JUDGMENT OF DISMISSAL

This matter came before the Court on respondent Randy Harding’s motion (Dkt. # 9) to dismiss petitioner Bobby Ray Parker’s 28 U.S.C. § 2254 petition for a writ of habeas corpus (Dkt. # 1). In an opinion and order filed contemporaneously herewith, the Court granted respondent’s motion and dismissed the petition, with prejudice, as barred by 28 U.S.C. § 2244(d)(1)’s one-year statute of limitations.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment of dismissal is hereby entered in favor of respondent and against petitioner.

DATED this 14th day of June, 2024.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

Exhibit D

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

5
FILED
United States Court of Appeals
Tenth Circuit

September 4, 2024

Christopher M. Wolpert
Clerk of Court

BOBBY RAY PARKER,

Petitioner - Appellant,

v.

RANDY HARDING,

Respondent - Appellee.

No. 24-5077

(D.C. No. 4:23-CV-00355-CVE-JFJ)

(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before PHILLIPS, BRISCOE, and CARSON, Circuit Judges.

Bobby Ray Parker, an Oklahoma prisoner proceeding pro se, seeks a certificate of appealability to appeal the district court's order dismissing his 28 U.S.C. § 2254 petition.¹ He also requests to proceed in forma pauperis (IFP) on appeal. Exercising jurisdiction under 28 U.S.C. § 1291 and § 2253, we deny Parker a COA and deny his IFP motion.

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Because Parker proceeds pro se on appeal, we liberally construe his filings, but we do not serve as his advocate. See *United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009).

• Front and Back

Exhibit E, p. 1 of 5

Exhibit E, p. 2 of 5
BACKGROUND

In 1993, Parker was convicted of two counts of robbery with a firearm, in violation of Okla. Stat. tit. 21, § 801. He was sentenced to forty-five years' imprisonment on count one and ninety years on count two. In 1995, the Oklahoma Court of Criminal Appeals (OCCA) affirmed his conviction. Parker then sought state postconviction relief, which was denied in 1999.² Over twenty years later, on January 1, 2023, Parker filed a new application for state-postconviction relief. The state trial court denied his application, ruling that it was time barred and procedurally barred. The OCCA affirmed.

On August 16, 2023, Parker filed his § 2254 petition. He raises four claims: (1) that he was forced to proceed pro se at trial, in violation of the Sixth Amendment; (2) that the State withheld exculpatory security-camera footage, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); (3) that he was arrested without a warrant, in violation of the Fourth Amendment; and (4) that his appellate counsel was ineffective, in violation of the Sixth Amendment.

The State filed a motion to dismiss Parker's § 2254 petition, arguing that the petition was untimely under § 2244(d)(1). The district court determined that Parker's "one-year limitation period began to run on April 24, 1996, and expired on April 24, 1997," so the court ruled that his habeas petition was

² Parker appealed that denial to the OCCA, but he filed his notice of appeal after the deadline. So the OCCA dismissed his appeal for lack of jurisdiction. Three years later, he sought an appeal out of time, which was also denied.

+ E, p. 3 of 5

Parker v. Harding, No. 23-CV-0355, 2024 WL

013661, at *2 (N.D. Okla. June 14, 2024). And because Parker hadn't sought equitable tolling or made a credible showing of actual innocence, the district court dismissed with prejudice his petition as time barred. *Id.* at *3. Parker timely filed a notice of appeal.

STANDARD OF REVIEW

Parker must obtain a COA to appeal the district court's ruling. To do so, he must show that "jurists of reason would find it debatable" (1) "whether the petition states a valid claim of the denial of a constitutional right" and (2) "whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

DISCUSSION

Section 2244(d)(1) provides a "1-year period of limitation . . . to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." Parker doesn't contest that he filed his habeas petition after § 2244(d)(1)'s one-year deadline. Rather, he argues that the statute doesn't apply to his habeas petition. He advances two theories in support, but both are unavailing.

First, Parker argues that § 2244 cannot bar habeas claims that raise structural errors. This is so, he contends, because structural errors require "automatic reversal." Op. Br. at 7. He notes that his habeas petition raises a structural-error claim: the complete denial of trial counsel. *See Gideon v.*

Exhibit E, p. 3 of 5