

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ERIC HUNE,

Petitioner,

ORDER

v.

03-C-0013-C

STEVEN BECK, Warden, Racine
Correctional Institution,

Respondent.

On January 23, 2003, this court entered an order dismissing petitioner Eric Hune's petition for a writ of habeas corpus under 28 U.S.C. § 2254. This court found that the petition showed that petitioner had failed to file his habeas corpus petition within the one-year statute of limitations set forth in § 2244(d)(1)(A). Petitioner has now filed a motion to reconsider his petition. Petitioner argues that this court should calculate his statute of limitations by applying § 2244(d)(1)(B), which permits a prisoner to file a habeas corpus petition within one year from "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." According to petitioner, two state-created impediments prevented him from filing his petition for habeas corpus sooner: 1) his incarceration at the Supermax Correctional Institution from December

10, 1999 to May 10, 2001; and 2) the failure of his state-appointed trial and appellate attorneys to provide him with trial transcripts.

Petitioner's assertions do not provide a basis on which to vacate or amend the January 23, 2003, dismissal order. In order for § 2244(d)(1)(B) to apply, the alleged impediment must prevent a petitioner from filing his petition. See Lloyd v. Vannatta, 296 F.3d 630, 633 (7th Cir. 2002). Although I do not doubt that petitioner's incarceration at the Supermax facility made it difficult for petitioner to file a habeas petition or state court postconviction motion, his allegations in his motion for reconsideration indicate that he was not *prevented* from doing so. Petitioner acknowledges that he had limited access to a law library. Although petitioner complains that the library's legal materials were inadequate because there were no Federal Reporters, petitioner did not need to support his petition with citations to specific cases. Furthermore, I note that petitioner was one of seven plaintiffs in a state court certiorari action that was filed during his incarceration at Supermax, which undermines his contention that his access to the courts was impeded. See Exhibit A, attached to Mot. for Reconsideration.

Likewise, petitioner's contention that his lawyers did not furnish him with transcripts in a timely fashion does not establish that he was prevented from filing his habeas petition. Because a habeas petitioner need only "set forth in summary form the facts supporting each of the grounds" raised in his petition, see Rules Governing Section 2254 Cases in the United

States District Courts, 4.2(c), citations to transcripts are unnecessary in order to allege the grounds for habeas relief. See Lloyd, 296 F.3d at 633 (citing cases).

In sum, petitioner's allegations do not provide a basis to conclude that a state-created impediment prevented him from filing an application for federal habeas corpus or state postconviction relief. Furthermore, to the extent petitioner's motion contains other allegations that can be construed as an argument in favor of equitable tolling, they are likewise inadequate. See United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000) (equitable tolling granted sparingly and only when "[e]xtraordinary circumstances far beyond the litigant's control must have prevented timely filing"); U.S. ex rel. Ford v. Page, 132 F. Supp. 2d 1112, 1115 (N.D. Ill. 2001) (run-of-the-mill claim of ignorance of law not sufficient to warrant equitable tolling); Posada v. Schomig, 64 F. Supp. 2d 790, 796 (C.D. Ill. 1999) (fact that prison was sometimes on lock-down, preventing access to prison law library, did not establish "extraordinary circumstances" justifying equitable tolling).

As a final matter, I note that on February 10, 2003, petitioner filed a motion for extension of time to file a notice of appeal from this court's order dismissing his petition. While that motion was pending, this court received a motion on February 12 from petitioner that purports to be a notice of appeal; however, in the document, petitioner asserts that his appeal is "forthcoming and timely." It is unclear from the February 12 document whether petitioner intends that document to serve as his notice of appeal or whether another document is forthcoming. Insofar as it appears that petitioner has yet to file his "actual"

notice of appeal, he is advised that, because he mailed his motion to reconsider within 10 days of the entry of the dismissal order, his time for filing his notice of appeal does not begin to run until the entry of *this* order. See Fed. R. App. Proc. 4(a)(4). Accordingly, his motion for an extension of time is denied as unnecessary. To the extent that petitioner wishes to appeal this order along with the January 23, 2003, order, he should file an amended notice of appeal in accordance with Fed. R. App. Proc. 4(a)(4)(b)(ii). Also, petitioner is advised that he must request a certificate of appealability pursuant to 28 U.S.C. § 2253(c). At this time, the court will take no action on the document filed February 12, 2003.

ORDER

IT IS ORDERED that the motion of Eric Hune for reconsideration of this court's order dismissing his petition for a writ of habeas corpus is DENIED. His motion for an extension of time for filing an appeal is DENIED as unnecessary.

Dated this 12th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge