

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

BRIAN T. PHEIL,

Petitioner,

v.

MATTHEW FRANK, Secretary, Wisconsin
Department of Corrections,

Respondent.

ORDER

03-C-487-C

Petitioner Brian T. Pheil has filed a motion for reconsideration of this court's order of October 22, 2003 dismissing his application for a writ of habeas corpus on the ground that it was untimely. In his motion, petitioner makes the same arguments he made in response to this court's order to show cause on the timeliness issue. As noted in the October 22, 2003, petitioner's youth, ignorance of the law and *pro se* status are not "extraordinary" circumstances that warrant equitable tolling of the one-year limitations period prescribed by 28 U.S.C. § 2244(d). Furthermore, petitioner's failure to adduce any new evidence in support of his claim of "actual innocence" is fatal to his claim for relief under that principle.

In his motion, petitioner adds a new claim that his failure to file a timely federal habeas petition was caused by his diabetes, a condition from which he was suffering during the limitations period but for which he has been diagnosed and treated only recently.

However, petitioner has not explained why he could not have included this information in his earlier submissions to this court. In any case, petitioner's vague allegations concerning his symptoms and their onset would be insufficient to meet petitioner's burden to show that equitable tolling is justified. Accordingly, petitioner's motion for reconsideration will be denied.

Petitioner has also filed a notice of appeal and a request for a certificate of appealability. In his letter accompanying the motions, petitioner asserts that he is proceeding in forma pauperis. However, petitioner has not submitted an affidavit to support his claim of pauper status. (He paid the five dollar filing fee for his habeas petition.) Accordingly, this court will take no action on petitioner's request for a certificate of appealability until he returns the enclosed affidavit in support of his request to proceed in forma pauperis or pays the \$105 filing fee.

ORDER

IT IS ORDERED that the motion of Brian T. Pheil for reconsideration of this court's order of October 22, 2003 is DENIED.

Petitioner's request for a certificate of appealability is STAYED until he submits an affidavit supporting his request to proceed in forma pauperis or pays the \$105 filing fee.

Dated this 29th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge