

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

ROGER LEE KAUFMAN,

Petitioner,

ORDER

v.

04-C-802-C

DANIEL BERTRAND, Warden, Green Bay
Correctional Institution,

Respondent.

On November 4, 2004, this court entered an order finding that the petition of Roger Lee Kaufman for a writ of habeas corpus under 28 U.S.C. § 2254 was untimely unless petitioner could show that he fell within the newly-discovered evidence exception to the one year statute of limitations, see § 2244(d)(1)(D), or that the statute should be tolled for equitable reasons. Petitioner has now filed a supplement to his petition in which he attempts to make this showing.

The facts are set forth in the court's previous order and are incorporated herein by reference. In his supplement, petitioner asserts that he did not discover the Juneau County jail logs that form the basis for one of his ineffective assistance of counsel claims until July and August 2003. Petitioner offers various reasons why he could not have discovered the jail logs earlier: he says he was not aware the records existed or that he was entitled to them, the District Attorney failed to provide him with discovery at the time of trial and his trial

lawyer informed him that Mavis's testimony was irrelevant. None of petitioner's assertions show that he could not have discovered the jail logs earlier with due diligence. More important, petitioner's assertions about the jail logs are beside the point. Petitioner asserts that the jail logs show that witness Kenneth Mavis was not in jail at the same time as petitioner, contrary to Mavis's testimony at trial. However, petitioner fails to explain why he needed the jail logs to prove this. As noted in the previous order, presumably petitioner would have known at trial that he had not been in jail with Mavis. Petitioner testified at trial and had the opportunity to deny the statements that Mavis allegedly attributed to him. Petitioner's belated discovery of the jail logs does not provide a basis to toll the statute of limitations under § 2244(d)(1)(D).

Petitioner argues that the statute of limitations should be tolled for equitable reasons, asserting that he was unaware of changes in the law affecting his ability to file a habeas petition and that the "interests of justice" require a finding that the shooting was accidental. It is well-settled that a claim of ignorance of the law is not one of the "extraordinary circumstances" that justifies equitable tolling. See Turner v. Johnson, 177 F.3d 390, 392 (5th Cir. 1999) ("neither a plaintiff's unfamiliarity with the legal process nor his lack of representation during the applicable filing period merits equitable tolling"); United States ex rel. Ford v. Page, 132 F. Supp. 2d 1112, 1115 (N.D. Ill. 2001) (citing cases). As for petitioner's claim that he is actually innocent of first degree intentional homicide, the Court of Appeals for the Seventh Circuit has held that even a petitioner claiming actual innocence

must show “that a reasonably diligent petitioner could not have discovered these facts in time to file a petition with the period of limitations.” Gildon v. Bowen, 384 F.3d 883, 887 (quoting Flanders v. Graves, 299 F.3d 974, 978 (8th Cir. 2002)). As noted above, petitioner has failed to make this showing. His petition must be dismissed as untimely.

ORDER

IT IS ORDERED that the petition of Roger Lee Kaufman for a writ of habeas corpus under § 2254 is DISMISSED WITH PREJUDICE for his failure to file it within the one-year limitations period.

Dated this 24th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge