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

RICHARD A. FORD,

Petitioner, ORDER

v. 06-C-757-C

TIMOTHY LUNDQUIST, Warden,
New Lisbon Correctional Institution,

Respondent.

Petitioner Richard Ford has filed notice of his intent to appeal from this court's order and judgment entered April 4, 2007 dismissing his petition for a writ of habeas corpus with prejudice on the ground that petitioner did not file it within the limitations period prescribed by 28 U.S.C. § 2244(d). Petitioner has requested permission to proceed in forma pauperis and has asked the court to issue a certificate of appealability.

A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Id.; see also 28 U.S.C. § 2253(c)(2). In order to make this showing, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.' " Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

In this case, I did not reach the merits of petitioner's constitutional claim, finding that the petition had to be dismissed because petitioner did not file it within one year of his conviction becoming final and had not shown that he was entitled to either statutory or equitable tolling. Because his case was dismissed on procedural grounds, petitioner must make the additional showing that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 529 U.S. at 484. Thus, "[d]etermining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding." Id. at 484-85.

It is not necessary to consider whether petitioner has made a substantial showing of the denial of a constitutional right because petitioner cannot show that jurists of reason would debate the correctness of this court's determination that the petition was untimely. Petitioner does not dispute that he filed his petition more than one year after his conviction became final and he does not contend that he filed any post-conviction motions in state court that would have tolled the federal limitations period. He argues only that he was not aware until long after his conviction became final that his appellate lawyer's failure to file a no-merit brief on petitioner's behalf might amount to a deprivation of petitioner's right to the assistance of counsel on direct appeal. It is well-settled, however, that a lack of legal knowledge or training does not amount to an exceptional circumstance warranting equitable

tolling. Montenegro v. United States, 248 F.3d 585, 594 (7th Cir. 2001); Fiero v. Cockrell, 294 F.3d 674, 682 (5th Cir. 2007).

Turning to petitioner's request to proceed in forma pauperis on appeal, I will deny his request because I find that he is not taking his appeal in good faith. 28 U.S.C. § 1915(a)(3). The requirement that an appeal be taken in good faith is less demanding than that required for the issuance of a certificate of appealability, insofar as the petitioner need show only that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). Nonetheless, I find that petitioner cannot make even this lesser showing. Given the undisputed tardiness of his petition and the absence of any arguably extraordinary circumstance that might warrant equitable tolling, reasonable persons could not suppose petitioner's appeal has any merit. Accordingly, I will deny petitioner's request to proceed in forma pauperis notwithstanding his failure to submit an affidavit of indigency.

ORDER

IT IS ORDERED that petitioner Richard Ford's request for leave to proceed in forma pauperis on appeal is DENIED because I am certifying that his appeal is not taken in good faith. If petitioner wishes to appeal this decision, he must follow the procedure set out in Fed. R. App. P. 24(a)(5).

Further, IT IS ORDERED that petitioner's request for a certificate of appealability is DENIED. Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of appealability, the defendant may request a circuit judge to issue the certificate.

Entered this 11th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge