

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

GARCEIA COLEMAN,

Petitioner,

OPINION AND ORDER

v.

12-cv-895-bbc

MICHAEL MEISNER,

Respondent.

Petitioner Garceia Coleman, a prisoner at the Columbia Correctional Institution, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He has paid the five dollar filing fee. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases. After completing this review, I conclude that the petition must be dismissed because it is barred by the statute of limitations.

From the petition and court records available electronically, I find the following facts.

FACTS

In 1990, petitioner was charged with first-degree intentional homicide and robbery, as party to a crime. He was convicted in May 1991 and sentenced to life imprisonment with a parole eligibility date in 2065 for the homicide, with an additional ten years of imprisonment for the robbery to run consecutively to the life sentence.

Petitioner appealed, and his counsel filed a no-merit report in August 1992, to which petitioner responded. Counsel raised multiple issues, including sufficiency of the evidence; petitioner raised a number of issues, including a complaint of ineffective assistance of trial counsel. The Wisconsin Court of Appeals concluded that no other issues of arguable merit existed and it affirmed petitioner's judgment of conviction in December 1993.

In July 2009, petitioner filed a pro se motion for a new trial under Wis. Stat. § 974.06, arguing that his trial counsel had been ineffective for failing to call four witnesses to testify and his post conviction counsel had been ineffective for failing to preserve the issue. The trial court determined that the motion was procedurally barred because petitioner had not raised the issues on direct appeal in his motion in response to the no-merit report. On May 11, 2010, the court of appeals affirmed this decision. On October 27, 2010, the Wisconsin Supreme Court denied petitioner's petition for review in summary fashion.

Petitioner filed a petition for a writ of habeas corpus with the state supreme court on September 23, 2011. The court denied the petition on December 5, 2011. Petitioner filed another petition for a writ of habeas corpus with the state court of appeals on January 24, 2012. The court of appeals denied the petition on June 28, 2012 and the supreme court denied the petition for review on November 14, 2012.

OPINION

Under the Antiterrorism and Effective Death Penalty Act of 1996, a state prisoner has one year to file a federal petition for habeas corpus relief, starting from "the date on

which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). The one-year limitations period is designed to "encourag[e] prompt filings in federal court in order to protect the federal system from being forced to hear stale claims." Carey v. Saffold, 536 U.S. 214, 226 (2002).

Ordinarily, when a prisoner challenges the validity of a state court judgment, the statute of limitations begins to run at "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). The conviction at issue became final in March 1994, following the expiration of the 90-day period in which petitioner could have applied for certiorari review by the United States Supreme Court. Balsewicz v. Kingston, 425 F.3d 1029, 1032 (7th Cir. 2005); Anderson v. Litscher, 281 F.3d 672, 675 (7th Cir. 2002).

A one-year grace period for filing was made available to prisoners such as petitioner, who were challenging a conviction that became final before the Antiterrorism and Effective Death Penalty Act was enacted on April 24, 1996. Newell v. Hanks, 283 F.3d 827, 832 (7th Cir. 2002). This means that petitioner had until April 24, 1997 to file a federal habeas corpus petition. Balsewicz, 425 F.3d at 1032 (7th Cir. 2005). The pending petition, which petitioner placed in the prison mail system in December 2012, is late by more than 15 years.

There are statutory exceptions to the one-year limitation period if any of the following circumstances are present: (1) the state has created an impediment to filing a petition; (2) the petition is based on a newly recognized constitutional right made retroactive by the Supreme Court; or (3) the claim is based on a new factual predicate, which new facts could

not have been discovered with due diligence on an earlier date. 28 U.S.C. § 2244(d)(1)(B)–(D). In addition, "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment" does not count toward the limitations period. 28 U.S.C. § 2244(d)(2). However, any time expended by petitioner on litigating later motions for post conviction relief does not come close to tolling the 15-year period following the end of his grace period, and he does not allege facts showing that a statutory or equitable exception applies. Therefore, the petition must be dismissed as barred by the governing statute of limitations.

Under Rule 11 of the Rules Governing Section 2254 Cases, the court must issue or deny a certificate of appealability when entering a final order adverse to petitioner. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). A petitioner makes a "substantial showing where 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." Arredondo v. Huibregtse, 542 F.3d 1155, 1165 (7th Cir. 2008). Where denial of relief is based on procedural grounds, the petitioner also must show that jurists of reason "would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

For the reasons stated above, reasonable jurists would not debate the decision that the petition is barred by the statute of limitations. Therefore, no certificate of appealability

will issue.

ORDER

IT IS ORDERED that

1. The federal habeas corpus petition filed by Garceia Coleman, dkt. #1, is DISMISSED with prejudice as barred by the governing statute of limitations.

2. A certificate of appealability is DENIED. Petitioner may seek a certificate from the court of appeals under Fed. R. App. P. 22.

Entered this 8th day of February, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge