

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 31, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

ANTHONY EARL RIDLEY,

Petitioner - Appellant,

v.

THOMAS L. WILLIAMS,

Respondent - Appellee.

No. 23-3028
(D.C. No. 5:22-CV-03304-JWL)
(D. Kan.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MORITZ, BALDOCK**, and **KELLY**, Circuit Judges.

Anthony Earl Ridley, proceeding pro se,¹ seeks a certificate of appealability (COA) to appeal the district court’s dismissal of his 28 U.S.C. § 2254 habeas petition as time-barred. For the following reasons, we deny his COA request and dismiss this matter.

I. Background

In August 2016, Mr. Ridley pled guilty in Kansas state court to one count each of attempted aggravated indecent solicitation of a child, aggravated battery, and lewd and

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ We liberally construe Mr. Ridley’s pro se filings, but we do not act as his advocate. See *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

lascivious behavior. The state trial court sentenced him to 24 months of probation, with an underlying controlling prison sentence of 34 months.

In September 2017, the court found that Mr. Ridley had violated the conditions of his probation, so it revoked his probation and ordered him to serve his underlying prison sentence. Mr. Ridley appealed from the revocation of his probation, but the Kansas Court of Appeals (KCOA) affirmed on July 6, 2018. Mr. Ridley had thirty days to file a petition for review in the Kansas Supreme Court (KSC), but he did not do so. The thirty-day petition for review period expired on August 6, 2018, and the judgment became final the next day.

In April 2020, Mr. Ridley filed a state petition for habeas relief. The state trial court dismissed the petition, concluding that one claim was time-barred and the rest were not properly brought in a habeas petition. Mr. Ridley appealed, but the KCOA affirmed. The KSC subsequently denied Mr. Ridley's petition for review.

On December 14, 2022, Mr. Ridley filed a pro se § 2254 habeas petition in federal district court. He did not attack his original criminal convictions; instead, he sought to attack the probation-revocation proceeding. He asserted he was actually innocent of the crime of domestic violence battery, which led to the revocation of his probation, and that the statute of limitations should not bar his petition because of his actual innocence claim.

The district court, however, issued a notice and show cause order in which it initially concluded that Mr. Ridley had not shown his entitlement to the actual innocence exception. But the court gave Mr. Ridley the opportunity to show cause why his matter should not be dismissed as untimely if he could either 1) demonstrate grounds for

equitable tolling or 2) establish the actual innocence exception would apply. In his response, Mr. Ridley argued that he had new reliable evidence that was not presented at his probation revocation hearing that would show his actual innocence of the domestic violence battery violation. The district court liberally construed Mr. Ridley's pro se response but concluded he had not shown he was entitled to equitable tolling or that the actual innocence exception applied. The district court therefore dismissed the habeas petition as time-barred. Mr. Ridley now seeks a COA to appeal the dismissal order.

II. Discussion

To appeal the district court's dismissal of his § 2254 habeas petition, Mr. Ridley must obtain a COA. *See* 28 U.S.C. § 2253(c)(1)(A). To obtain a COA where, as here, a district court has dismissed a filing on procedural grounds, Mr. Ridley must show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and 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). We need not address the constitutional question if we conclude that reasonable jurists would not debate the district court's resolution of the procedural one. *Id.* at 485.

The Antiterrorism and Effective Death Penalty Act (AEDPA) establishes a one-year statute of limitations to file petitions for federal habeas relief under § 2254. *See* 28 U.S.C. § 2244(d)(1). Mr. Ridley's probation-revocation judgment became final on August 7, 2018, and the statute of limitations expired on August 7, 2019. *See id.* § 2244(d)(1)(A). Mr. Ridley did not file his habeas petition until December 2022, and he

does not dispute that it was untimely under the statute. Instead, he asserts he “is entitled to the actual innocence exception to the AEDPA statute of limitations.” COA Appl. at 5.²

Actual innocence “[i]s an available equitable exception to AEDPA’s time bar for first [habeas] petitions.” *Fontenot v. Crow*, 4 F.4th 982, 1030 (10th Cir. 2021). “Accordingly, a credible showing of actual innocence will allow [a petitioner] to overcome . . . his failure to abide by the federal statute of limitations in order to have his [habeas] claim heard on the merits.” *Id.* To make such a showing, a petitioner must “present new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” *Id.* at 1031 (internal quotation marks omitted).

In response to the show cause order, Mr. Ridley claimed he recently discovered the state trial court violated his constitutional rights by denying certain post-hearing motions based on a perceived lack of jurisdiction. R. at 200. He asserted this alleged violation was “new reliable evidence” that was not presented at his revocation hearing. The district court concluded, however, that this was not “the type of evidence that sufficiently supports an actual innocence argument.” *Id.* at 213. Because Mr. Ridley had not shown the actual innocence exception applied, the district court dismissed his habeas petition as untimely.

² Because some of the pages in Mr. Ridley’s COA application are missing numbers, we use the numbers in the upper right-hand corner that were added by this court.

In his COA application, Mr. Ridley contends the district court erred in dismissing his habeas petition as time-barred. But Mr. Ridley’s discovery that the state trial court may have been wrong about its lack of jurisdiction to consider certain post-revocation motions is not the type of “new reliable evidence” that this court described in *Fontenot*. Mr. Ridley has not identified any “exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence,” *Fontenot*, 4 F.4th at 1031 (internal quotation marks omitted), that was not presented at his probation revocation hearing. Because he did not establish the actual innocence exception applied, he has failed to show reasonable jurists could debate the district court’s procedural ruling dismissing his habeas petition as time-barred.

III. Conclusion

We deny the request for COA and dismiss this matter. We deny as moot Mr. Ridley’s motion for appointment of counsel.

Entered for the Court

Nancy L. Moritz
Circuit Judge