FILED
United States Court of Appeals
Tenth Circuit

October 12, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANNY LYNN DANIELS,

Defendant - Appellant.

No. 22-4084
(D.C. Nos. 4:22-CV-00011-DN &
4:19-CR-00064-TS-1)
(D. Utah)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MORITZ**, **BRISCOE**, and **CARSON**, Circuit Judges.

Petitioner Danny Lynn Daniels, appearing pro se, seeks a certificate of appealability ("COA") to challenge the district court's denial of his 28 U.S.C. § 2255 application. He also requests leave to proceed in forma pauperis. For the reasons stated below, we deny his request for a COA and dismiss this matter. We deny the motion to proceed in forma pauperis.

I.

Before the district court, Petitioner moved to vacate his federal sentence under 28 U.S.C. § 2255, raising a Sixth Amendment ineffective assistance of counsel claim. He

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

also alleged violations of his Second Amendment right to possess a firearm and Sixth Amendment rights to due process and a speedy trial.[1] The United States District Court for the District of Utah dismissed Petitioner's motion as untimely and denied Petitioner a COA. United States v. Daniels, No. 4:22-cv-00011, ECF No. 6 (D. Utah, Aug. 17, 2022).

II.

To receive a COA, Petitioner must make a "substantial showing of the denial of a constitutional right." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (quoting 28 U.S.C. § 2253(c)(2)). This generally requires a "showing 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)) (internal quotation marks omitted). When a district court denies a § 2255 motion on procedural grounds, including for untimeliness, a petitioner requesting a COA must also show us that reasonable jurists would find debatable the correctness of the procedural ruling. Id. When we can rule based on the procedural question without addressing the constitutional merits question, we often do so. Id. at 485.

Section 2255(f)(1) requires Petitioner to file any § 2255 motion within one year of "the date on which the judgment of conviction becomes final." Petitioner's conviction and sentence became final on December 4, 2019, but Petitioner did not file his motion

[1] Petitioner did not directly appeal his conviction or sentence.

until February 16, 2022, more than a year later than § 2255(f)(1) permits. So, Petitioner's § 2255 application is untimely.

Even so, because we can equitably toll § 2255's one-year limitation period, we could nonetheless consider Petitioner's motion timely if he qualifies.[2] See United States v. Gabaldon, 522 F.3d 1121, 1123–24 (10th Cir. 2008). To qualify for equitable tolling, Petitioner must establish "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005) (citing Irwin v. Dep't of Veterans Affs., 498 U.S. 89, 96 (1990)). He must establish these elements with "specific facts." Yang v. Archuleta, 525 F.3d 925, 928 (10th Cir. 2008) (quoting Brown v. Barrow, 512 F.3d 1304, 1307 (11th Cir. 2008)).

Assuming without deciding that Petitioner has diligently pursued his rights, Petitioner has plainly failed to show the second element. To establish extraordinary circumstances, "the circumstances that caused a litigant's delay [need be] both extraordinary *and* beyond [his] control." Menominee Indian Tribe v. United States, 577 U.S. 250, 257 (2016). Petitioner's only contention is that his lack of legal education creates an extraordinary circumstance. We explicitly rejected lack of legal education or "ignorance of the law" as an extraordinary circumstance in Marsh v. Soares, 223 F.3d

[2] The equitable tolling analysis is identical whether a court is reviewing a motion under 28 U.S.C. §§ 2244, 2254, or 2255. Compare United States v. Gabaldon, 522 F.3d 1121, 1123–24 (10th Cir. 2008) (analyzing equitable tolling for a prisoner's untimely § 2255 motion), with Yang v. Archuleta, 525 F.3d 925, 928 (10th Cir. 2008) (analyzing equitable tolling for a prisoner's untimely § 2254 motion), and Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005) (analyzing equitable tolling for a prisoner's untimely § 2244 motion).

1217, 1220–21 (10th Cir. 2000). Cf. Miller v. Marr, 141 F.3d 976, 978 (10th Cir. 1998) (lack of access to case law or legal assistance is not an extraordinary circumstance). Petitioner, therefore, does not qualify for equitable tolling of § 2255's one-year period.

Because Petitioner fails to meet the statutory requirements and does not qualify for equitable tolling, reasonable jurists could not debate whether the "petition should have been resolved in a different manner." Slack, 529 U.S. at 484 (quoting Barefoot, 463 U.S. at 893 n.4) (internal quotation marks omitted). We therefore deny Petitioner's request for a COA. Because we deny the COA, we do not reach the merits of his petition and dismiss this matter. We deny the motion to proceed in forma pauperis.

Entered for the Court

Joel M. Carson III
Circuit Judge