

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 16, 2026

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

TIMOTHY SHAWN CATO,

Petitioner - Appellant,

v.

CARRIE BRIDGES,

Respondent - Appellee.

No. 24-5093
(D.C. No. 4:23-CV-00387-GKF-SH)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, MORITZ, and FEDERICO**, Circuit Judges.

Petitioner Timothy Cato, an Oklahoma prisoner, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition as untimely. We vacate and remand for further proceedings.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

I. BACKGROUND

A. *Statute of Limitations*

Under 28 U.S.C. § 2244(d), “[A] 1-year period of limitation shall apply to an application for a writ of habeas corpus.” § 2244(d)(1). “The limitation period shall run from the latest of” four potential dates. Two—(d)(1)(A) and (d)(1)(B)—are relevant here:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; [or]

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action[.]

Id.

The one-year limitations clock pauses for “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending.” § 2244(d)(2).

B. *Procedural History*

In November 2016, an Oklahoma jury convicted Mr. Cato of multiple counts of child sexual abuse. The state trial court sentenced him to 215 years in prison. On October 4, 2018, the Oklahoma Court of Criminal Appeals (“OCCA”) affirmed his convictions and sentence.

1. Section 2244(d)(1)(A) Deadline

Mr. Cato did not seek Supreme Court review by the January 2, 2019 deadline. The parties agree that his one-year limitations period under § 2244(d)(1)(A) began to run on January 3, 2019.

On December 11, 2019, 342 days later, Mr. Cato filed a pro se motion for state postconviction relief, thereby pausing the clock under § 2244(d)(2) until the postconviction proceedings concluded.

On November 20, 2020, the state trial court denied postconviction relief. Under (d)(1)(A), the clock remained paused because “regardless of whether a petitioner actually appeals a denial of a post-conviction application, the limitations period is tolled during the period in which the petitioner *could have* sought an appeal under state law.” *Gibson v. Klinger*, 232 F.3d 799, 804 (10th Cir. 2000). Because Mr. Cato did not appeal by the state-law deadline of January 19, 2021, under (d)(1)(A) the clock resumed on January 20.

At this point, Mr. Cato had 23 days, until February 12, 2021, to file a federal habeas petition (365 days minus the 342). He filed on September 5, 2023. Thus, under (d)(1)(A) and § 2244(d)(2), his petition was well over two years late.

2. Mr. Cato’s Explanation for the Untimely § 2254 Filing

According to Mr. Cato, he did not timely appeal the state postconviction court’s November 2020 order denying relief because he did not receive that order until “about” October 5, 2022. R. at 224. This occurred after he had made multiple requests for information on the status of his case. He then obtained his prison mail

logs, which showed he received no mail from the state trial court before October 5. On December 2, 2022, he moved in the state trial court for an appeal out of time.

In response, the State conceded Mr. Cato should receive an appeal out of time. The state trial court then entered a factual finding that Mr. Cato “was denied an appeal . . . through no fault of his own,” R. at 239, and recommended that the OCCA allow an appeal out of time, which it did in February 2023. The appeal went forward, and the OCCA affirmed the denial of postconviction relief on August 17, 2023.

3. District Court Dismissal

After Mr. Cato filed his federal habeas petition, the State moved to dismiss it as time-barred under (d)(1)(A). It further argued that Mr. Cato should not receive equitable tolling.

Mr. Cato responded that “[b]oth the [state] court clerk and the [state] district judge failed in their duty to provide Petitioner with timely notice of the court’s denial of relief.” R. at 411, ¶ 4. “Given the circumstances,” he said, the petition should be deemed “timely per statute or . . . entitled to equitable tolling.” *Id.* ¶ 6. Mr. Cato further accused the State of “seek[ing] to place responsibility on Petitioner” for the state trial court’s “violation of Petitioner[’s] due process for [its] failure to a) expeditiously rule on the Petitioner’s application for post-conviction relief (see OK Const., Art. II § 6) and b) notify him of [its] decision when it was made.” R. at 412, ¶ 7.

The district court granted the State’s motion to dismiss. It stated that Mr. Cato had not “expressly invoke[d]” (d)(1)(B), “and his allegations fail to demonstrate

entitlement to a commencement date under [that] provision[.]” R. at 417. The court focused on (d)(1)(A) and concluded that Mr. Cato’s petition was untimely unless statutory tolling under § 2244(d)(2) or equitable tolling applied.

As for statutory tolling, the court noted that Mr. Cato’s (d)(1)(A) clock had already been running for 342 days since his conviction became final before any § 2244(d)(2) tolling event. The court further concluded § 2244(d)(2) was in effect during two timeframes:

- **from December 11, 2019**, when Mr. Cato filed for state postconviction relief, **until January 19, 2021**, the deadline to appeal the November 2020 order denying postconviction relief; and
- **from December 2, 2022**, when Mr. Cato filed his state-court motion for an appeal out of time, **until August 17, 2023**, the date of the OCCA’s decision resolving that out-of-time appeal on the merits.

Because there was no tolling between January 19, 2021, and December 2, 2022, a period much longer than 23 days, the (d)(1)(A) clock ran out during that time.

Turning to equitable tolling, the district court concluded it need not reach the matter because “the period at issue is insufficient to render Cato’s petition timely.” R. at 420. The court explained that 58 days elapsed between October 5, 2022, when Mr. Cato first learned of the November 20, 2020 order, and December 2, 2022, when he filed his motion for an appeal out of time. “Thus, even if Cato is entitled to equitable tolling during the period in which he lacked notice of the state district court’s resolution of his application for postconviction relief, the tolling does not render his petition timely.” *Id.* In other words, even assuming that equitable tolling could bridge the gap from November 20, 2020, when the state court denied

postconviction relief, to October 5, 2022, when Mr. Cato first learned of that denial, the (d)(1)(A) clock then resumed and ran out before December 2, 2022.

For these reasons, the district court granted the State's motion to dismiss Mr. Cato's habeas petition as untimely, denied a certificate of appealability ("COA"), and entered final judgment.

C. Certificate of Appealability

Mr. Cato filed a timely notice of appeal and moved for a COA from this court. In that motion, he argued the state trial court's failure to timely send him the November 20, 2020 order qualified as a (d)(1)(B) event that reset the one-year clock. He also argued for equitable tolling.

This court "grant[ed] a COA on one issue: whether Cato's petition was timely under § 2244(d)." Order at 7 (Apr. 18, 2025), Dkt. No. 11-1. This court also directed that counsel be appointed for Mr. Cato and ordered supplemental briefing from the parties.

II. DISCUSSION

A. Whether (d)(1)(B) Applies

The State asks this court to affirm the denial of (d)(1)(B) relief because Mr. Cato forfeited his (d)(1)(B) argument by failing to present it to the district court. Although the issue is close, we disagree.

"A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Thus, "if the court can reasonably read the

pleadings to state a valid claim . . . it should do so despite the plaintiff’s failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements.” *Id.*

In response to the State’s motion to dismiss, Cato specifically accused the state trial court of violating his due process rights when it failed to timely send him its disposition of his postconviction application. This adequately preserved a claim that “State action in violation of the Constitution” created an “impediment” to timely filing. § 2244(d)(1)(B). Also, the district court appeared to decide the issue, stating that Mr. Cato’s “allegations fail[ed] to demonstrate entitlement to a commencement date under [(d)(1)(B)].” R. at 417; *see Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 991–92 (10th Cir. 2019) (“[The] forfeiture rule does not apply when the district court explicitly considers and resolves an issue of law on the merits.” (quotations omitted)).

As noted above, on (d)(1)(B), the district court said only that Mr. Cato’s “allegations fail to demonstrate entitlement to a commencement date under [that] provision[.]” R. at 417. This summary rejection was insufficient to enable meaningful appellate review. *See, e.g., OCI Wyo., L.P. v. PacifiCorp*, 479 F.3d 1199, 1204 (10th Cir. 2007) (“[T]oo little detail frustrates meaningful appellate review by requiring the parties and this court to guess at why the district court reached its conclusion.”). We therefore remand to the district court for more fulsome consideration of the (d)(1)(B) issue. *See, e.g., Smith v. Blockbuster Ent. Corp.*,

100 F.3d 878, 882 (10th Cir. 1996) (remanding because district court analysis inadequately developed).¹

B. Equitable Tolling

Mr. Cato also argues the district court erred regarding equitable tolling. “[Section] 2244(d) is subject to equitable tolling in appropriate cases.” *Holland v. Florida*, 560 U.S. 631, 645 (2010). “[A] petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Id.* at 649 (internal quotation marks omitted). “We review a district court’s decision on equitable tolling for abuse of discretion.” *Woodward v. Williams*, 263 F.3d 1135, 1142 (10th Cir. 2001).

1. Expansion of the COA

This court granted a COA “on one issue: whether Mr. Cato’s petition was timely under § 2244(d).” Order at 7 (Apr. 18, 2025), Dkt. No. 11-1. The COA does not clearly include equitable tolling. The State does not address whether it does. Mr. Cato suggests that if equitable tolling is not already part of the COA, this court should expand the COA to include it. *See United States v. Shipp*, 589 F.3d 1084, 1087–88 (10th Cir. 2009) (noting the appellate court’s power to expand a previously granted COA). We agree and expand the COA accordingly.

¹ Remand is further appropriate in light of our decision to remand the equitable tolling issue, which could resolve the timeliness issue.

2. The District Court’s Failure to Analyze Equitable Tolling

The district court said that even if equitable tolling applies to the gap between November 20, 2020 (order denying postconviction relief) and October 5, 2022 (when Mr. Cato first learned of that order), Mr. Cato waited more than 23 days (the time remaining on his (d)(1)(A) clock) to file his state-court motion for an appeal out of time, which the district court treated as the next (d)(2) tolling event. Because he waited 58 days—October 5, 2022, to December 2, 2022—the court said (d)(1)(A) clock expired.

The district court said it was avoiding an equitable tolling analysis because any equitable tolling ended on October 5, 2022. But the court assumed October 5 was the proper end date without determining whether Mr. Cato exercised reasonable diligence or whether extraordinary circumstances existed. *See Holland*, 560 U.S. at 649. As the Ninth Circuit observed, “a petitioner’s diligence after the abatement of the extraordinary circumstance matters.” *Perez v. Reubart*, 150 F.4th 1164, 1175 (9th Cir. 2025).

The State counters that Mr. Cato’s district court arguments were too thin to deserve equitable tolling. *See Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008) (“An inmate bears a strong burden to show specific facts to support his claim of extraordinary circumstances and due diligence.” (brackets and internal quotation marks omitted)). Perhaps, but again, “[w]here an issue has not been ruled on by the court below, we generally favor remand for the district court to examine the issue,” *Tabor v. Hilti, Inc.*, 703 F.3d 1206, 1227 (10th Cir. 2013).

III. CONCLUSION

We vacate the dismissal of Mr. Cato's § 2254 petition and remand for further proceedings consistent with this order and judgment.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge