

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 10, 2026

Christopher M. Wolpert
Clerk of Court

WALTER EDWARD WALKER,

Petitioner - Appellant,

v.

JOHN MASQUELIER,

Respondent - Appellee.

No. 26-6067
(D.C. No. 5:26-CV-00065-G)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MATHESON, MURPHY**, and **ROSSMAN**, Circuit Judges.

This matter is before the court on Walter Edward Walker’s pro se request for a certificate of appealability (“COA”). Walker seeks a COA so he can appeal the district court’s dismissal of his 28 U.S.C. § 2254 habeas petition. *See* 28 U.S.C. § 2253(c)(1)(A) (providing no appeal may be taken from a final order denying habeas corpus relief unless the petitioner first obtains a COA). Because Walker has not “made a substantial showing of the denial of a constitutional right,” *id.* § 2253(c)(2), this court **denies** his request for a COA and **dismisses** this appeal.¹

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Walker’s request to proceed on appeal in forma pauperis is **granted**.

In late 2020, Walker pleaded guilty in Oklahoma state court to seventeen counts of indecent or lewd acts with a child under the age of sixteen and seven counts of forcible oral sodomy. In January 2026, Walker filed the instant § 2254 habeas petition challenging his convictions and sentence. Walker’s § 2254 petition was referred to a magistrate judge for initial proceedings. *See* 28 U.S.C. § 636(b)(1)(B). The magistrate judge issued a Report and Recommendation (“R & R”) on March 10, 2024, which recommended that Walker’s petition be dismissed as untimely. The R & R specifically advised Walker that he had the right to file objections by March 27, 2026,² and that failure to do so waived appellate review of both the factual findings and legal conclusion contained therein. On April 7, 2026, the district court entered an order adopting the R & R. The district court noted that, despite the clear admonition set out in the R & R, Walker neither filed timely objections nor requested more time to do so. Judgment was entered that same day.³ Walker then filed a timely notice of appeal designating the district court’s April 7th order of dismissal as the order on appeal. In response, this court

² This seventeen-day period to file objections incorporates both the fourteen-day period set out in Fed. R. Civ. P. 72(b)(2) and the three-day period set out in Fed. R. Civ. P. 6(d).

³ On April 8, 2026, the Clerk’s Office for the Western District of Oklahoma received in the mail (1) objections to the R & R and (2) a notice of appeal designating the R & R as the only order subject to appeal. Both documents indicated they were placed in the prison mail system on April 1, 2026. Thus, having been filed past the deadline of March 27, 2026, the objections were not timely. On April 10, 2026, this court entered an order dismissing, for lack of appellate jurisdiction, Walker’s appeal from the R & R. *See* Order, *Walker v. Masquelier*, No. 26-6058 (10th Cir. Apr. 10, 2026), Dkt. No. 2 (concluding the R & R was not a final order and, therefore, no appellate jurisdiction existed under 28 U.S.C. § 1291).

entered a show-cause order directing Walker to explain why his failure to file proper objections to the R & R did not waive appellate review. Walker filed both a response to the show-cause order as well as a combined opening brief and request for a COA.

To be entitled to a COA, Walker must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). That is, he must demonstrate “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.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotations omitted). “[W]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue . . . if the prisoner shows, at least, 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, 478 (2000). This court reviews for abuse of discretion a district court’s determination that a petitioner is not entitled to equitable tolling. *Fleming v. Evans*, 481 F.3d 1249, 1254-55 (10th Cir. 2007) (holding that this court will grant a COA from an order denying equitable tolling only if reasonable jurists could debate whether the district court’s “refusal to toll the statute of limitations was an abuse of discretion”).

No matter how this court proceeds to review Walker’s request for a COA, it is patent that he has not made a substantial showing of a denial of a constitutional right. First, Walker has not demonstrated jurists of reason would debate the district court’s

ruling that he waived review of the R & R by failing to file timely objections. *See Hodson v. Reams*, 823 F. App'x 659, 662 (10th Cir. 2020) (“The firm waiver rule bars our appellate review of the claims and precludes the grant of a COA.”).⁴ “Under this court’s firm waiver rule, the failure to timely object to a magistrate judge’s finding and recommendations waives appellate review of both factual and legal questions.” *Klein v. Harper*, 777 F.3d 1144, 1147 (10th Cir. 2015) (quotations omitted). This court has delineated two exceptions to the rule: (1) when “a pro se litigant has not been informed of the time period for objecting and the consequences of failing to object,” and (2) when “the interests of justice require review.” *Duffield v. Jackson*, 545 F.3d 1234, 1237 (10th Cir. 2008) (quotations omitted). Factors relevant to the interests-of-justice exception include “a pro se litigant’s effort to comply [with the objection requirement], the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised” *Morales-Fernandez v. I.N.S.*, 418 F.3d 1116, 1120 (10th Cir. 2005). At a minimum, this court’s interests-of-justice standard “includes plain error.” *Id.* at 1122. “Plain error occurs when there is (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 1122-23 (quotations omitted).

Walker’s response to this court’s show-cause order fails to grapple with the governing standard set out above. Instead, he simply asserts, in conclusory fashion, that

⁴ This court’s unpublished dispositions are not binding and are cited solely for their persuasive value. *See* 10th Cir. R. 32.1 (“Unpublished decisions are not precedential, but may be cited for their persuasive value.”); *see also* Fed. R. App. P. 32.1.

he did not understand the rules and asks this court to treat the premature notice of appeal he filed in docket no. 26-6058 as a timely filing. To be clear, however, Walker did not file any document, specifically including the premature notice of appeal and untimely objections, by March 27, 2026, the deadline identified in the R & R. Instead, he placed those documents in the prison legal mail system on April 1, 2026, four days past the deadline. His response does not explain why he could not file his objections in a timely fashion. Nor does Walker's response to the show-cause order address the interests of justice or the requisite existence of plain error. Although this court must construe pro se pleadings liberally, "this rule of liberal construction stops . . . at the point at which [the court] begin[s] to serve as [an] advocate." *United States v. Pinson*, 584 F.3d 972, 975 (10th Cir. 2009). Based on the arguments, or lack thereof, set out in Walker's response to this court's show-cause order, no jurist could reasonably debate the correctness of the district court's ruling that Walker waived review of the R & R by failing to timely file objections.

Furthermore, even assuming this court should factor out the firm waiver rule in deciding whether Walker is entitled to a COA, *see United States v. Thyberg*, 722 F. App'x 847, 849-50 (10th Cir. 2018), Walker has not demonstrated that the district court's timeliness determination is reasonably subject to debate. Indeed, Walker does not even attempt to do so in his request for COA. Instead, Walker appears to assert this court has already set aside the district court's order.⁵ As noted above, however, this represents an

⁵ The entirety of the analysis in Walker's brief is the following paragraph:

erroneous view of the procedural history of this case. In No. 26-6058, this court dismissed Walker's premature appeal of the R & R for lack of appellate jurisdiction. Nothing in that order set aside either the R & R or the district court order adopting the R & R. Nor does the fact Walker filed a timely notice of appeal from the district court's adoption of the R & R serve to "set aside" the district court's order. In any event, an exacting review of the R & R leaves no doubt that the district court properly determined Walker's § 2254 petition was untimely and Walker is not entitled to statutory tolling. Likewise, that close review demonstrates no reasonable jurist could debate whether the district court acted within the bounds of its discretion in concluding Walker was not entitled to equitable tolling.

This court **DENIES** Walker's request for a COA. The appeal is hereby **DISMISSED**.

Entered for the Court

Michael R. Murphy
Senior Circuit Judge

Western District Court's R & R stated that petitioner is untimely and denied C.O.A. However[,] petitioner filed a just in time "Notice of Appeal" which the 10th Circuit applied to petitioner. Overruling itself and therefore the Western Federal District Court.

Petitioner's Combined Opening Brief and Application for a Certificate of Appealability at 3.