

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 6, 2026

Christopher M. Wolpert
Clerk of Court

PATRICK HENRY HILL, II,

Petitioner - Appellant,

v.

WILLIAM “CHRIS” RANKINS,
Warden,

Respondent - Appellee.

No. 25-6152
(D.C. No. 5:24-CV-00564-G)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HOLMES**, Chief Judge, **MORITZ**, and **FEDERICO**, Circuit Judges.

Patrick Henry Hill, II, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his 2002 conviction in Oklahoma state court. The district court dismissed the petition as untimely and denied a certificate of appealability (COA). Hill, proceeding pro se, seeks a COA from this court so he can appeal the district court’s dismissal.¹ See 28 U.S.C.

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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 afford Hill’s pro se filings a liberal construction, but we may not act as his advocate. See *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

2253(c)(1)(A) (requiring a COA to appeal a final order in a habeas proceeding).

We deny a COA and dismiss this matter.

I

The State of Oklahoma charged Hill with first-degree manslaughter for the death of D.S., his girlfriend's young son. In March 2002, D.S. stopped breathing while he was in Hill's care. Hill called 911 and attempted to resuscitate D.S, but D.S. died after he was taken to the hospital. The medical examiner found the cause of death to be head trauma and classified it as a homicide. Hill entered a blind plea of guilty to the manslaughter charge. In his plea, he stated that he "shook D.S. causing an injury from which he died." R. at 151. The trial court sentenced Hill to life in prison in November 2002.

Over ten years later, in April 2013, Hill filed an application for post-conviction relief, a motion to withdraw his guilty plea, and a motion for an evidentiary hearing. The trial court held two evidentiary hearings – one in 2013 and one in 2021 – where an expert witness, Dr. Stephen Kwame Ofori-Kwayke ("Dr. Ofori") testified on Hill's behalf. In September 2021, the trial court denied Hill's application for post-conviction relief and the motion to withdraw his guilty plea, explaining it was "not persuaded the evidence presented justifies [Hill's] request to have [his] conviction, which resulted from a voluntary plea of guilty, set aside." R. at 212.

Hill then filed his § 2254 habeas petition. Respondent moved to dismiss the petition as untimely or, alternatively, for failure to exhaust state remedies. Hill argued that he had new evidence of actual innocence that could overcome the time bar and permit the merits of his habeas claims to be heard. A magistrate judge recommended that the motion to dismiss be granted, and Hill filed objections to the recommendation. The district court overruled the objections, granted the motion to dismiss, and dismissed the habeas petition without prejudice. The court also denied a COA. Hill now seeks a COA to appeal the district court's dismissal of his habeas petition.

II

To obtain a COA where, as here, a district court has dismissed a filing on procedural grounds without reaching the merits, Hill 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). But a court need not address the constitutional question if it can resolve the procedural issue first. *Id.* at 485.

III

In this disposition, we address only the district court's procedural ruling – that Hill's habeas petition was not timely filed, and he did not make a

showing of actual innocence to overcome the time bar. We do not address the constitutional question presented in the *Slack* standard² because we conclude that reasonable jurists would not debate the district court's resolution of the procedural issue.

A

Habeas petitions have strict time limits for when they need to be filed. “A 1-year period of limitation” applies to an “application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.” 28 U.S.C. § 2244(d)(1). The one-year period generally runs from the date on which the state-court judgment became “final.” *See id.* § 2244(d)(1)(A). Or it can also run from “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” *Id.* § 2244(d)(1)(D).³

The district court concluded that Hill's November 21, 2002 conviction became final under § 2244(d)(1)(A) on December 3, 2002, so the one-year period

² Because we are not considering whether any of the claims in Hill's habeas petition state a valid claim of the denial of a constitutional right, we deny a COA on the fourth, fifth, and seventh issues Hill presents in his COA application because those issues raise arguments related to the merits of his habeas claims.

³ There are two other scenarios that trigger the running of the one-year period to file a habeas petition, *see* §§ 2244(d)(1)(B),(C), but they are not relevant to this case.

for filing a habeas petition expired on December 3, 2003. But the court also considered the timeliness of the petition under § 2244(d)(1)(D). It explained that it gave Hill “the greatest possible benefit of the doubt” and “us[ed] the latest start date reasonably supported by the record, as well as statutory tolling.” R. at 341-42. But even under these circumstances, the court determined that the habeas petition would still be untimely because the one-year period expired on or about October 10, 2023, but Hill did not file his petition until May 24, 2024. The court therefore concluded the petition was untimely, “absent . . . an exception to the one-year limitations period.” *Id.* at 343.

In his first issue, Hill asserts that the district court “incorrectly applied the law” because neither § 2244(d)(1)(A) nor (d)(1)(D) “foreclose[s] a petitioner’s showing of actual innocence.” COA App. at 11. But Hill does not explain how the court incorrectly applied the law when it calculated the dates on which the limitations period expired under those statutory provisions. And the court never said that either of the provisions foreclosed a showing of actual innocence. Reasonable jurists could therefore not debate the district court’s conclusion that Hill’s petition was untimely filed under §§ 2244(d)(1)(A) or (d)(1)(D), absent an exception to the one-year limitation period.

B

The district court then considered Hill’s argument that he was entitled to an exception to the one-year limitation period for filing his habeas petition because he had made a showing of actual innocence.

“[A] credible showing of actual innocence may allow a prisoner to pursue his constitutional claims on the merits notwithstanding the existence of a procedural bar to relief.” *Fontenot v. Crow*, 4 F.4th 982, 1029 (10th Cir. 2021) (ellipsis and internal quotation marks omitted). The Supreme Court has explained this type of innocence claim is “not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.” *Schlup v. Delo*, 513 U.S. 298, 315 (1995) (internal quotation marks omitted); *see also McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013) (“[A]ctual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar . . . or . . . expiration of the statute of limitations.”).

To pass through the actual-innocence gateway, a habeas 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.” *Schlup*, 513 U.S. at 324. The habeas petitioner “must establish that, in light of new evidence, it is more likely than not that no

reasonable juror would have found [the] petitioner guilty beyond a reasonable doubt.” *Fontenot*, 4 F.4th at 1030 (internal quotation marks omitted).

Hill presented new evidence in the form of the medical opinion of Dr. Ofori – who testified at the two evidentiary hearings in state court. He attached the transcripts from those hearings to his habeas petition. Hill relied on Dr. Ofori’s opinion to argue that (1) D.S. did not die as a result of Hill shaking him, and (2) the diagnosis of shaken baby syndrome is no longer fully accepted within the medical community.

1

Prior to discussing Hill’s new evidence, the magistrate judge found that Hill’s guilty plea undermined his claim of actual innocence. The magistrate judge observed that the state trial judge found Hill’s plea to be “knowing and voluntary and supported by a factual basis,” which included Hill’s “admission that he ‘shook D.S. causing an injury from which he died.’” R. at 308 (quoting R. at 151). And relying on an unpublished decision from this court, *United States v. McAbee*, 685 F. App’x 682, 684 (10th Cir. 2017), the magistrate judge explained that “actual innocence claims are rarely successful, and this is particularly so in cases where the petitioner knowingly and voluntarily pled guilty.” R. at 308 (brackets, ellipsis, and internal quotation marks omitted). The magistrate judge further explained, “in addressing an actual innocence claim, a habeas court ‘may take into account the fact that the petitioner’s

conviction was based on a guilty plea predicated on the petitioner's representations of competence and voluntariness, and findings by the court.” *Id.* at 308-09 (quoting *O'Bryant v. Oklahoma*, 568 F. App'x 632, 637 (10th Cir. 2014)).⁴

Hill objected to this portion of the magistrate judge's recommendation, arguing his “guilty plea was not intelligent where he had not been made aware of relevant circumstances, i.e., information that creates a reasonable doubt that Hill's conduct caused injury or ‘head trauma’ to D.S. that resulted in his death – information that was found by Dr. Ofori upon review of medical records obtained from the hospitals that treated D.S.” R. at 325.

The district court addressed this objection, explaining, “contrary to Petitioner's suggestion, a knowing and intelligent plea does not require that the defendant be aware of every potential conclusion to be drawn from the state's evidence.” *Id.* at 346. It further explained, “[t]he longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” R. at 346-47 (quoting *Hill v. Lockhart*, 474 U.S. 52, 56 (1985)). The district court then overruled the objection, concluding:

Petitioner's alleged lack of awareness as to differing conclusions that could be drawn from medical records does not evince any lack

⁴ We cite unpublished decisions for their persuasive value only and do not treat them as binding precedent. 10th Cir. R. 32.1(A).

of a full understanding of what the plea connotes and of its consequences. There being no showing that Petitioner's guilty plea was not intelligently entered, the undersigned discerns no error in the magistrate judge's consideration of that plea in determining whether Petitioner has satisfied the actual-innocence standard.

R. at 347 (internal quotation marks omitted).

In his third issue, Hill argues the district court erred by concluding that his plea was voluntary and intelligent. In doing so, Hill relies primarily on the allegations in his ineffective-assistance-of-counsel claim in his habeas petition, and on a supporting affidavit from his counsel. He contends his guilty plea was not voluntary because his counsel advised him that he would not be sentenced to more than twenty years, and his plea was not intelligent because his counsel failed to investigate and present other relevant evidence. In the affidavit, his counsel stated “[t]hat had the medical evidence that is available now been available in 2002, I would have never advised Mr. Hill to enter a plea of guilty,” and “[i]t also appears from the statement of Dr. Ofori that [Hill] may have had a factual innocence claim in 2002.” R. at 38. Hill asserts that the district court's assessment of his guilty plea is debatable.

But Hill's ineffective-assistance-of-counsel claim and supporting affidavit are not before this court as part of our review of the district court's procedural ruling on timeliness. The State did not respond to that claim on the merits, and the district court did not review the merits of that claim. That is because a district court may not review the merits of a time-barred claim (here,

the ineffective-assistance claim) *unless* the petitioner first establishes actual innocence. *See Fontenot*, 4 F.4th at 1029-30. And this court should also not consider Hill’s arguments that reiterate the ineffective-assistance-of-counsel claim in his habeas petition. *See McAbee*, 685 F. App’x at 685 n.4 (observing that petitioner “faults his counsel for not alerting him to [legal authority] and not discovering [certain evidence,] [b]ut these arguments reiterate the ineffective assistance of counsel claims raised in his § 2255 motion” and “[w]e cannot consider them because they are untimely and, as we explain, he has failed to excuse that untimeliness”).

We also note that the affidavit from Hill’s counsel was not evidence that was submitted to support Hill’s actual-innocence argument. *See R.* at 18 (stating that “the ‘new reliable evidence’ in support of Petitioner’s actual innocence claim is reflected in the records attached hereto,” and citing the two transcripts of the state evidentiary hearings from 2013 and 2021 that were attached to the habeas petition). But even if it had been submitted, the affidavit would not support a showing of actual innocence – it pertains solely to counsel’s failure to properly advise Hill on whether to plead guilty. There is nothing in the affidavit that presents new relevant evidence or that demonstrates “no reasonable juror would have found [Hill] guilty beyond a reasonable doubt,” *Fontenot*, 4 F.4th at 1030 (internal quotation marks omitted).

Because the district court dismissed Hill's habeas petition as untimely after concluding that Hill did not establish actual innocence, there is no basis for this court to consider his ineffective-assistance-of-counsel claim or the evidence to support that claim when evaluating whether the district court properly considered Hill's guilty plea as part of the actual-innocence analysis. Hill has not shown that reasonable jurists would debate the district court's conclusion that his guilty plea was voluntary and intelligent and could be considered when evaluating his claim of actual innocence.

2

The magistrate judge described Hill's new evidence as follows:

[Hill] relies on Dr. Ofori's opinion that the doctors who saw D.S. after his injury had a "general working diagnosis" of shaken baby syndrome, a diagnosis Dr. Ofori refuted, as well as Dr. Ofori's conclusion that he "categorically disagreed with the opinion of the state forensic pathologist that the cause of [D.S.'s] death was head trauma."

R. at 309 (ellipsis and certain internal quotation marks omitted).

The magistrate judge concluded that "[a]t most, [Hill] has established that Dr. Ofori disagrees with the idea that D.S. died because of being shaken by [Hill]." *Id.* at 310. But the magistrate judge explained that Hill had not provided "reasoned argument or analysis to demonstrate that Dr. Ofori's disagreement would create such reasonable doubt that no reasonable juror would have found [Hill] guilty." *Id.* The magistrate judge also observed that

Hill had not “present[ed] the Court with any other evidence creating reasonable doubt,” and the state medical examiner disagreed with Dr. Ofori’s opinions, so the new evidence just created a “battle of the experts.” R. at 310-11 (internal quotation marks omitted). Relying on an unpublished decision from this court, the magistrate judge further explained that “disagreement among experts presents a question of credibility and is insufficient to establish actual innocence.” *Id.* at 312 (citing *Parnell v. White*, No. 23-5103, 2024 WL 4198643, at *3 (10th Cir. Sept. 16, 2024)); *see id.* (“The Tenth Circuit in *Parnell* noted that ‘conflicting evidence, even conflicts between experts, is for a jury to resolve; and we cannot say that a reasonable jury would credit only one of the witnesses.’” (quoting *Parnell*, 2024 WL 4198643, at *3) (brackets omitted)).

Hill objected to this portion of the magistrate judge’s recommendation. The district court reviewed this aspect of the recommendation *de novo*. The court agreed that “[t]he likely effect of Dr. Ofori’s disagreement with the State’s theory that D.S. died as a result of being shaken by Petitioner, even coupled with the physician’s testimony as to the diminishing acceptance of the diagnosis of shaken baby syndrome, would have been, at most, a battle of the experts.” R. at 348-49 (internal quotation marks omitted). And it “[could not] say that a reasonable jury would credit only’ Dr. Ofori’s testimony, if presented.” *Id.* at 349 (quoting *Parnell*, 2024 WL 4198643, at *3). The district court therefore concluded that Hill’s “new evidence does not show he

committed no crime or that it is more likely than not that no reasonable juror would have convicted him on the manslaughter charge for the death of D.S.” *Id.* (internal quotation marks omitted). As a result, the court determined that Hill “failed to show that he is entitled to consideration of his untimely constitutional claims . . . pursuant to the actual-innocence equitable exception.” *Id.* at 350.

In his second and sixth issues, Hill argues that the district court erred because it did not make a holistic judgment about the evidence and its likely effect on reasonable jurors as *House v. Bell*, 547 U.S. 518, 538-39 (2006), requires. But in making this argument Hill asserts that the state medical examiner did not review certain medical records in reaching the conclusions in the autopsy report. *See, e.g.*, COA Appl. at 13 (“The medical examiner had not reviewed the medical records or the CT scan report from the respective hospitals [where] D.S. had been treated.”); *id.* at 21 (“[T]he examiner had not reviewed medical records and CT reports as part of the forensic pathology investigation.”). But Hill offers no record citations to support these assertions, and we have not found any support for these assertions in our review of the record.

For his argument that he had made a showing of actual innocence to permit the district court to consider his time-barred claims, Hill relied solely on the testimony from Dr. Ofori at the two evidentiary hearings in state court.

See R. at 18. At those hearings, Dr. Ofori never testified that the medical examiner's autopsy report was deficient because the medical examiner did not review all the pertinent medical records. Dr. Ofori simply disagreed with the medical examiner's determination about the cause and manner of death. So, Hill's new evidence of innocence does not support his argument that the medical examiner did not review all the necessary medical records.

The district court *did* consider the effect of Hill's new evidence of Dr. Ofori's competing medical opinion on the jury, but it determined that it could not say that a reasonable jury would credit only Dr. Ofori's testimony over the state medical examiner's opinion. Hill has not shown that reasonable jurists would debate the district court's decision.

IV

Hill has not demonstrated his entitlement to a COA. He has not shown that reasonable jurists would debate the district court's conclusion that his habeas petition was untimely, and he failed to establish the actual-innocence exception to overcome the time bar of his habeas claims.

We grant Hill's motion for leave to proceed without prepayment of costs or fees. We deny his application for a COA and dismiss this matter.

Entered for the Court

Richard E.N. Federico
Circuit Judge