FILED
United States Court of Appeals
Tenth Circuit

August 18, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

TAMAR JACKSON,

Petitioner - Appellant,

v.

TERRY TUGGLE, Warden,

Respondent - Appellee.

No. 26-5067
(D.C. No. 4:25-CV-00365-SEH-SH)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

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

This matter is before the court on Tamar Jackson's pro se request for a certificate of appealability ("COA"). Jackson seeks a COA so he can appeal the district court's dismissal, on timeliness grounds, 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); *id.* § 2244(d) (setting out a one-year statute of limitations as to habeas corpus petitions). Because Jackson has not "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), this court **denies** his request for a COA and **dismisses** this appeal.

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

In his § 2254 habeas petition, Jackson sought to challenge his 2016 Oklahoma state convictions, entered upon guilty pleas, to the following crimes: 1) obtaining property by trick or deception after former conviction of two or more felonies; 2) possession of a false identification card after former conviction of two or more felonies; and 3) knowingly concealing stolen property after former conviction of two or more felonies. In response, Oklahoma asserted all claims raised in Jackson's § 2254 petition were time-barred, Jackson was not entitled to equitable tolling, and Jackson could not avoid the time-bar through the invocation of "actual innocence." In reply, Jackson conceded his claims were untimely and he was not entitled to statutory tolling, *see* 28 U.S.C. § 2244(d)(2), but asserted he was entitled to equitable tolling and was actually innocent.

In a thorough order, the district court concluded Jackson did not come close to demonstrating an entitlement to equitable tolling. *See Gibson v. Klinger*, 232 F.3d 799, 808 (10th Cir. 2000) (holding that equitable tolling is available "only in rare and exceptional circumstances"). In that regard, the district court ruled Jackson failed to demonstrate he acted diligently or the existence of extraordinary circumstances. *See Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000) (holding that equitable tolling "is only available when [the petitioner] diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control"). As to the existence of extraordinary circumstances, the district court noted Jackson's allegations of ineffective assistance did not rise above garden variety attorney negligence. *See Holland v. Florida*, 560 U.S. 631, 652 (2010) (holding that attorney negligence can warrant equitable tolling only in extraordinary instances when the conduct constitutes "far more than garden variety or excusable neglect" (quotations omitted)). Furthermore, the record, particularly the transcript of the plea colloquy, eviscerated Jackson's claim of ineffective assistance. As to diligence, the district court observed Jackson's filings were completely silent as to what efforts, if any, he undertook during the eight-plus years between when his convictions became final and when he finally sought to challenge those convictions in state court.

The district court likewise concluded Jackson failed to satisfy the demanding evidentiary requirement for demonstrating the actual innocence pathway for avoiding § 2244(d)'s limitations period. *See McQuiggin v. Perkins*, 569 U.S. 383, 386, 401 (2013). First, the district court noted Jackson's guilty plea undermined his claim of actual innocence. *See O'Bryant v. Oklahoma*, 568 F. App'x 632, 637 (10th Cir. 2014) (holding that in addressing an actual innocence claim, this 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"); *see also Johnson v. Medina*, 547 F. App'x 880, 885 (10th Cir. 2013) (concluding the petitioner's guilty plea undermined his assertion of actual innocence).[1] Furthermore, the district court recognized Jackson had failed to cite new evidence in support of his claim of actual innocence. *Fontenot v. Crow*, 4 F.4th 982, 1031 (10th Cir. 2021) ("To be credible, a

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[1] All unpublished dispositions cited in this order are considered solely for their persuasive value and are not treated as binding precedent. *See* Fed. R. App. P. 32.1; 10th Cir. R. 32.1.

claim of actual innocence requires a petitioner to present new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." (quotation omitted)).

To be entitled to a COA, Jackson 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 (10th Cir. 2007); *see also Hill v. Williams*, 432 F. App'x 749, 750 (10th Cir. 2011) (recognizing that the actual innocence pathway to avoiding § 2244(d)'s limitations period is a form of equitable tolling). Thus, this court will grant a COA only if reasonable jurists could debate whether the district court's "refusal to toll the statute of limitations was an abuse of discretion." *Fleming*, 481 F.3d at 1254-55.

This court has closely reviewed the district court's order, Jackson's appellate filings, and the entire appellate record. The district court's denial of Jackson's requests for equitable tolling is not reasonably subject to debate. In so concluding, this court has nothing to add to the cogent analysis set out in the district court's order of dismissal. Accordingly, this court **DENIES** Jackson's request for a COA and **DISMISSES** this appeal.

Entered for the Court

Michael R. Murphy
Circuit Judge