

UNITED STATES COURT OF APPEALS September 16, 2021

TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

STEPHEN TARANOVICH,

Petitioner - Appellant,

v.

WYOMING DEPARTMENT OF
CORRECTIONS WARDEN, also
known as Michael Pacheco;
WYOMING ATTORNEY GENERAL,

Respondents - Appellees.

No. 21-8039
(D.C. No. 0:21-CV-00115-ABJ)
(D. Wyo.)

**ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Before **BACHARACH, MURPHY, and CARSON**, Circuit Judges.

Petitioner, Stephen Taranovich, a Wyoming state prisoner proceeding *pro se*, seeks a certificate of appealability (“COA”) so he can appeal the district court’s dismissal of the habeas corpus petition he filed pursuant to 28 U.S.C. § 2254. *See* 28 U.S.C. § 2253(c)(1)(A) (providing no appeal may be taken from a final order disposing of a § 2254 petition unless the petitioner first obtains a COA). In 2018, Taranovich was convicted of involuntary manslaughter and sentenced as a habitual criminal pursuant to Wyo. Stat. Ann. § 6-10-201. In

2021, he filed a § 2254 habeas corpus petition with the United States District Court for the District of Wyoming.

The district court dismissed the § 2254 petition as untimely, concluding consideration of the ineffective assistance claims raised therein was time-barred because the petition was filed after the expiration of the limitations period established by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). *See* 28 U.S.C. § 2244(d) (setting forth a one-year statute of limitations for § 2254 petitions). Because Taranovich did not file a direct appeal, the district court concluded his state conviction became final on November 8, 2018. Thus, he had one year from that date to file his § 2254 habeas petition, but did not file it until June 10, 2021.

The district court concluded Taranovich was not entitled to statutory tolling of the limitations period under 28 U.S.C. § 2244(d)(2). *See Fisher v. Gibson*, 262 F.3d 1135, 1142-43 (10th Cir. 2001) (holding there is no statutory tolling for time spent in state post-conviction proceedings if relief is not sought until after the one-year AEDPA limitations period has expired). The district court also rejected the proposition Taranovich was entitled to equitable tolling of the AEDPA limitations period, concluding he failed to show an extraordinary circumstance prevented him from filing his petition and further failed to show he diligently pursued his rights. *Lawrence v. Florida*, 549 U.S. 327, 336 (2007)

(“To be entitled to equitable tolling, [the petitioner] must show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” (quotation omitted)).

To be entitled to a COA, Taranovich must show “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, 484-85 (2000) (holding that when a district court dismisses a habeas petition on procedural grounds, a petitioner is entitled to a COA only if he shows both that reasonable jurists would find it debatable whether he had stated a valid constitutional claim and debatable whether the district court’s procedural ruling was correct). This court reviews the district court’s decision on equitable tolling of the limitations period for abuse of discretion. *Burger v. Scott*, 317 F.3d 1133, 1138 (10th Cir. 2003).

Our review of the record demonstrates that the district court’s dismissal of Taranovich’s § 2254 petition as untimely is not deserving of further proceedings or subject to a different resolution on appeal. The record fully supports the district court’s conclusion that Taranovich failed to demonstrate entitlement to either statutory or equitable tolling.

Because Taranovich has not made a substantial showing of the denial of a constitutional right, we **deny** his request for a COA and **dismiss** this appeal.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge