

No. 08-4203

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT



RICHARD WADE COOEY, II,)
)
Plaintiff)
)
ARTHUR TYLER;)
Intervenor-Appellant,)
)
v.)
)
TED STRICKLAND, et al.;)
)
Defendants-Appellees.)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO

Before: GIBBONS, ROGERS, and SUTTON, Circuit Judges.

JULIA SMITH GIBBONS, Circuit Judge. Arthur Tyler appeals the district court's dismissal of his 42 U.S.C. § 1983 challenge to Ohio's method of execution. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not necessary. Fed. R. App. P. 34(a).

Tyler was convicted of aggravated murder and sentenced to death on January 19, 1986. On April 25, 2007, he filed an intervenor complaint in a § 1983 lawsuit challenging Ohio's protocol for lethal-injection brought by fellow death-sentenced inmate, Richard Cooley. After this Court held that Cooley's challenge was time-barred, *Cooley v. Strickland (Cooley II)*, 479 F.3d 412, 424 (6th Cir. 2007), the district court dismissed Tyler's complaint on the same grounds.

Tyler argues that his claim is not barred under *Cooley II* for the following reasons: (1) *Cooley II* was wrongly decided; (2) *Cooley II*, even if correctly decided, does not apply to Tyler; (3) *Cooley II* borrowed the statute of limitations from the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244, under which Tyler's claim is timely; (4) Tyler is entitled to equitable tolling; and (5) the continuing-violations doctrine precludes application of the statute of limitations to method-of-execution challenges. Further, Tyler argues that he is entitled to further factual development of the statute of limitations question.

A thorough review of the record reveals that Tyler's arguments are nearly identical to those considered and rejected by this Court in appeals by other death-sentence inmates who had also intervened in *Cooley II*. See *Broom v. Strickland*, — F.3d —, No. 08-4200, 2009 WL 2739603 (6th Cir. Sept. 1, 2009); *Getsy v. Strickland*, — F.3d —, No. 08-4199, 2009 WL 2475165 (6th Cir. Aug. 13, 2009), *reh'g en banc denied*, 2009 WL 2496573 (6th Cir. Aug 17, 2009), *cert. denied*, No. 09-5935, 2009 WL 2490098 (Aug. 17, 2009). The reasoning set forth in *Broom*, *Getsy*, and *Cooley II* is binding on this panel and, to the extent the cases have already addressed Tyler's arguments, we adopt their reasoning here. Tyler's other arguments not directly addressed by this Court in those cases were raised before the district court. See *Cooley v. Strickland*, No. 2:04-cv-1156, 2008 WL 4065844, at *1 (S.D. Ohio Aug. 25, 2008) (incorporating by reference the reasoning of *Cooley v. Strickland*, No. 2:04-cv-1156, 2008 WL 4065809 (S.D. Ohio Aug. 25, 2008)). Upon review of the district court opinion, we find it to be correctly decided and affirm the reasoning therein.

For the reasons set forth above, we **AFFIRM** the judgment of the district court.