FILED
United States Court of Appeals
Tenth Circuit

December 30, 2013

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

MICHAEL D. CHAPPELL,

             Petitioner - Appellant,

v.

WILLIAM MONDAY, Warden,

             Respondent - Appellee.

No. 13-6178
(D.C. No. 5:13-CV-000231-M)
(W.D. Oklahoma)

ORDER DENYING CERTIFICATE
OF APPEALABILITY

Before **LUCERO**, **McKAY,** and **MURPHY**, Circuit Judges.

Proceeding *pro se*, Oklahoma state prisoner Michael D. Chappell seeks a

certificate of appealability ("COA") so he can appeal the district court's denial of

the habeas petition he filed pursuant to 28 U.S.C. § 2254. *See* 28 U.S.C.

§ 2253(c)(1)(A) (providing that no appeal may be taken from a final order

disposing of a § 2254 petition unless the petitioner first obtains a COA).

In 2003, Chappell pleaded guilty to forgery and possession of a false

identification card ("Case No. CF-2002-6646"). All but the first three years of

his five-year sentence were suspended. In 2005, Chappell pleaded guilty to

larceny of an automobile after a prior felony conviction. Based on that charge,

his suspended sentence in Case No. CF-2002-6646 was revoked. He was

sentenced in both matters on July 15, 2008. The Oklahoma Court of Criminal

Appeals ("OCCA") affirmed the judgment on September 18, 2009, and Chappell

did not seek review in the United States Supreme Court. Thus, his conviction and

sentence became final ninety days later on December 17, 2009. Chappell filed a

state application for post-conviction relief on October 25, 2010, approximately

two months before the one-year statute of limitations expired. *See* 28 U.S.C.

§ 2244(d)(1) (setting forth a one-year statute of limitations for § 2254

applications). The OCCA denied relief on March 6, 2012.

Chappell filed the instant § 2254 petition on March 7, 2013, approximately

ten months after the statute of limitations expired. *See id*. § 2244(d)(2)

(providing for statutory tolling of the limitations period for the "time during

which a properly filed" state petition for collateral relief is pending). In the

petition, Chappell argued his sentenced was improperly enhanced by a prior

conviction and asserted court documents had been altered to "cover up" his

allegedly illegal sentence. He also raised claims of ineffective assistance of trial

and appellate counsel. Respondent moved to dismiss Chappell's habeas petition,

arguing, *inter alia*, it was untimely because it was filed after the expiration of the

one-year limitations period established by the AEDPA. The matter was referred

to a magistrate judge who recommended the petition be dismissed because it was

untimely and Chappell failed to show any entitlement to equitable tolling. *See*

Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir. 2000) ("AEDPA's one-year

statute of limitations is subject to equitable tolling but only 'in rare and

exceptional circumstances.'"). Chappell filed timely objections to the magistrate

judge's recommendation and those objections were considered *de novo* by the

district court. The court, however, adopted the magistrate judge's

recommendation and dismissed Chappell's § 2254 petition as untimely.

To be entitled to a COA, Chappell 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. 474, 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). Our review of the record

demonstrates that the district court's dismissal of Chappell's § 2254 petition as

untimely is not deserving of further proceedings or subject to a different

resolution on appeal.

We **deny** Chappell's request for a COA and **dismiss** this appeal.

Chappell's motion to proceed *in forma pauperis* on appeal is **granted**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge