

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

THOMAS DEPTULA,

Petitioner,

v.

Case No.: 2:24-cv-52-SPC-KCD

WARDEN, DESOTO
CORRECTIONAL INSTITUTION,

Respondent.

_____ /

AMENDED¹ OPINION AND ORDER

Before the Court is Petitioner Thomas Deptula's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 1). Deptula challenges a Florida court's 2008 order designating him a sexually violent predator. Deptula made the same argument in a § 2254 habeas action filed in this district as Case No. 2:23-cv-128-JLB-KCD. United States District Judge John Badalamenti dismissed that petition with prejudice because Deptula filed it well after the limitations period set in § 2244(d). Deptula attempts to circumvent the statute of limitations by filing under § 2241. The Eleventh Circuit squarely rejected that tactic in *Peoples v. Chatman*:

Because there is a single habeas corpus remedy for those imprisoned pursuant to a State court judgment (authorized by § 2241 but subject to all of the restrictions of § 2254), and because

¹ The original Opinion and Order inadvertently omitted directions to the Clerk and denial of a certificate of service.

one of those restrictions is the one-year statute of limitations set out in § 2244(d), it follows that the one-year state of limitations applies to Peoples' petition.

393 F.3d 1352, 1353 (11th Cir. 2004). Like Peoples, Deptula is imprisoned pursuant to a State court judgment. Thus, the one-year statute of limitations applies regardless of the statute he cites in the caption of his petition.

Certificate of Appealability

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, the “district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Because Deptula is not entitled to habeas corpus relief, the Court must now consider whether he is entitled to a certificate of appealability. It finds that he is not.

A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability (“COA”). “A [COA] may issue...only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, Deptula must demonstrate that “reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong,” *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that “the issues presented were ‘adequate to deserve

encouragement to proceed further,” *Miller-El*, 537 U.S. at 335-36. Deptula has not made the requisite showing.

Accordingly, it is now

ORDERED:

Petitioner Thomas Deptula’s Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 1) is **DISMISSED as untimely**. The Clerk is **DIRECTED** to enter judgment and close this case.

DONE and ORDERED in Fort Myers, Florida on January 23, 2024.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record