

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

WILLIAM B. CROCKETT, III, )	)	
	)	
Petitioner, )	)	
	)	
vs. )	)	CAUSE NO. 3:15-CV-384
	)	
SUPERINTENDENT, )	)	
	)	
Respondent. )	)	

**OPINION AND ORDER**

This matter is before the Court on the Amended Petition under 28 U.S.C. Paragraph 2254 for Writ of Habeas Corpus received from William B. Crockett, III, a *pro se* prisoner, on August 27, 2015. For the reasons set forth below, the court **DISMISSES** this habeas corpus petition because it is untimely and **DENIES** a certificate of appealability.

**DISCUSSION**

William B. Crockett, III, a *pro se* prisoner, is attempting to challenge his murder conviction and the 65 year sentence imposed by the St. Joseph Superior Court on January 25, 2005, under cause number 71D01-0310-MR-27. Habeas Corpus petitions are subject to a strict one year statute of limitations.<sup>1</sup> Question 16 asked Crockett

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<sup>1</sup> 28 U.S.C. § 2254(d) provides that:  
(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

to explain why this petition is timely. In response, this is what he wrote:

Petitioner's timely direct appeal was denied on December 28, 2005. He filed his petition for post-conviction relief 140 days later on May 17, 2006. The 365 days a petitioner ordinarily has to file a federal habeas petition, minus 140 days, is 225 days remaining. Adding the 90 days allowed for petitioning the U.S. Supreme Court for a writ of certiorari leaves a total of 315 days. *Balsewicz v. Kingston*, 425 F.3d 1029, 1032 (7th Cir. 2005). The final State court ruling on his petition was on October 16, 2014. He therefore has 315 days from that date, *i.e.*, until August 27, 2015, to file this petition.

DE 1 at 5.

Neither that answer nor the one ineffective assistance of counsel ground raised in the petition indicate that they are based on newly discovered evidence or a newly recognized constitutional right. Neither is there any indication that a state-created impediment prevented him from filing his federal petition on time. Accordingly, pursuant to 28 U.S.C. § 2244(d)(1)(A), the 1-year

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(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

period of limitation began on the date when the judgment became final upon the expiration of the time for seeking direct review of his conviction and sentence.

Crockett's answer to Question 16 recognizes the applicability of § 2244(d)(1)(A) and how to apply it to calculate the timeliness of his petition. However, his calculation arrives at the wrong result because it incorrectly assumes that 90 days for filing a petition for certiorari is automatically added in every case. It is not. Section 2244(d)(1)(A) states that the limitation period begins on, "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." Here, Crockett filed a direct appeal with the Court of Appeals of Indiana. That court affirmed his conviction on December 28, 2005. He did not petition for transfer to the Indiana Supreme Court. The time for doing so expired 30 days later on January 27, 2006.<sup>2</sup> That was when his judgment became final because the time for seeking further review had expired. Therefore the 90 days for filing a petition for certiorari with the United States Supreme Court is not applicable to this case.

Petitioners who appeal to the Indiana Supreme Court are afforded an additional 90 days because that is the time during which they could file a petition for certiorari to the United

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<sup>2</sup> See Indiana Rules of Appellate Procedure 57.C. which provides that a notice of appeal must be filed within 30 days.

States Supreme Court. However, because Crockett did not appeal to the Indiana Supreme Court, he could not file a petition for certiorari. The United States Supreme Court "can review . . . only judgments of a 'state court of last resort' or of a lower state court if the 'state court of last resort' has denied discretionary review." *Gonzalez v. Thaler*, 132 S. Ct. 641, 656 (2012). In Indiana, the State court of last resort is the Indiana Supreme Court. Because Crockett did not appeal to the Indiana Supreme Court, his appeal ended with the Court of Appeals of Indiana, from which he could not petition for certiorari to the United States Supreme Court. As the United States Supreme Court explained, "We therefore decline to incorporate the 90-day period for seeking certiorari in determining when Gonzalez's judgment became final." *Id.* The same is true for Crockett. He is not entitled to an additional 90 days.

Thus, the limitation period began on January 28, 2006, and ran until Crockett filed a post-conviction relief petition on May 17, 2006. While the post-conviction relief petition was pending, the limitation period was tolled pursuant to 28 U.S.C. § 2244(d)(2). However, before it was tolled, 109 days had elapsed and Crockett had only 256 days remaining.<sup>3</sup> The tolling ended on October 16, 2014, when the Indiana Supreme Court denied transfer in Crockett's

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<sup>3</sup> When necessary, the 1-year period of limitation is counted as (and divided into) days. See *Holland v. Florida*, 560 U.S. 631, 638 (2010) ("At that point, the AEDPA federal habeas clock again began to tick - with 12 days left on the 1-year meter.")

post-conviction appeal. The 1-year period of limitation then began again, and expired 256 days later on June 29, 2015. However, Crockett did not sign and mail this habeas corpus petition until nearly two months later on August 21, 2015. Therefore it is untimely and must be dismissed. Though this might seem harsh, even petitions that are one day late are time barred. *See United States v. Marcello*, 212 F.3d 1005, 1010 (7th Cir. 2000) and *Simms v. Acevedo*, 595 F.3d 774 (7th Cir. 2010).

Finally, pursuant to Rule 11 of the Rules Governing Section 2254 Cases, the Court must consider whether to grant a certificate of appealability. When the court dismisses a petition on procedural grounds, the determination of whether a certificate of appealability should issue has two components. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). First, the petitioner must show that reasonable jurists would find it debatable whether the court was correct in its procedural ruling. *Id.* at 484. If the petitioner meets that requirement, then he must show that reasonable jurists would find it debatable whether the petition states a valid claim for the denial of a constitutional right. *Id.* As previously explained, this petition is untimely. Because there is no basis for finding that jurists of reason would debate the correctness of this procedural ruling or find a reason to encourage him to proceed further, a certificate of appealability must be denied.

CONCLUSION

For the reasons set forth above, the court **DISMISSES** this habeas corpus petition because it is untimely and **DENIES** a certificate of appealability.

**DATED: January 15, 2016**

**/s/RUDY LOZANO, Judge  
United State District Court**