

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL PEARSON,

Petitioner,

v.

Case Number 08-14422

Honorable David M. Lawson

RAYMOND BOOKER,

Respondent.

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ORDER DENYING CERTIFICATE OF APPEALABILITY

The petitioner, Samuel Pearson, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 that the Court denied as untimely on August 11, 2011. The Court will now consider whether to issue a certificate of appealability.

A certificate of appealability 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). Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997). To receive a certificate of appealability, “a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotes and citations omitted).

The petitioner filed his habeas petition after the statute of limitations had expired, and the Court denied the petitioner’s request to equitably toll the statute of limitations because he failed to show “‘extraordinary circumstances stood in his way’ and prevented timely filing.” *Lawrence v.*

Florida, 549 U.S. 327, 336 (2007) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). The Court also found that the petitioner is not entitled to equitable tolling because he did not make a credible claim of actual innocence. The Court now finds that reasonable jurists could not debate that this Court correctly dismissed the petitioner's claim. Therefore, the Court will deny the petitioner a certificate of appealability.

Accordingly, it is **ORDERED** that the certificate of appealability is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 11, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 11, 2011.

s/Deborah R. Tofil
DEBORAH R. TOFIL