

No. 4:13CV1517 NAB

Petitioner has responded that he is not challenging his judgment or sentence. He states that he is challenging the “arbitrary” denial of his motion to recall the mandate.

Pursuant to 28 U.S.C. § 2254, “a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). Because petitioner is not challenging the fact of his custody or the validity of the state court’s judgment, his petition must be dismissed.

Moreover, even if petitioner were raising a cognizable claim, his petition would have to be dismissed as time-barred. Title 28 U.S.C. § 2244(d) imposes a one-year limitations period on the filing of § 2254 petitions. The one-year period of limitations for filing habeas petitions did not exist when petitioner was convicted, or prior to enactment of the AEDPA on April 24, 1996. In addressing this issue, the United States Court of Appeals for the Eighth Circuit has “held that time before the effective date of AEDPA, April 24, 1996, is not counted in computing the one-year period of limitation [under § 2244(d)]. Prisoners whose judgments of conviction became final before the effective date of AEDPA are given a one-year period after that date, or until April 24, 1997, plus any additional periods during which the statute is tolled.” Peterson v. Gammon, 200 F.3d 1202, 1204 (8th Cir. 2000). As a result, the one-year period of limitations for the instant petition expired more than sixteen years ago.

For these reasons, petitioner is not entitled to federal habeas relief. Furthermore, petitioner has failed to make a substantial showing of the denial of a constitutional right, which requires a demonstration “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.” Khaimov v. Crist, 297 F.3d 783, 785 (8th Cir. 2002) (quotation omitted). Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).


Accordingly,

IT IS HEREBY ORDERED that the petition is **DISMISSED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

An Order of Dismissal will be filed with this Memorandum and Order.

Dated this 26th day of August, 2013.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE