IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT LEE HARRIS JR.,
Petitioner,
v.
F. MCANINCH, WARDEN,
Respondent.

Case No. 2:14-CV-0982
Judge Peter C. Economus
Magistrate Judge Abel
MEMORANDUM OPINION AND ORDER

This matter is before the Court for consideration of Petitioner's Notice of Appeal, filed September 8, 2014. (Dkt. 10.) The Court will construe this notice as a request for a certificate of appealability ("COA"). For the reasons that follow, the Court **DENIES** Petitioner's request for a COA. (Dkt. 10.)

Petitioner asserts that he was illegally extradited from Canada to Maine, held in Maine beyond expiration of his sentence, and then illegally extradited from Maine to Ohio.

On August 22, 2014, this Court entered a final judgment dismissing the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Dkt. 9.) The Court dismissed this action as time-barred and, alternatively, for failure to state a claim. (Dkt. 8.)

As provided in 28 U.S.C. § 2253, a petitioner seeking to appeal an adverse ruling in the district court on a petition for writ of habeas corpus must obtain a COA before proceeding. The statute does contemplate issuance by a circuit judge, but Rule 11(a) of the Rules Governing Section 2254 Cases provides:

> The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from

> the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

"When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Thus, "[d]etermining whether a COA should issue where the petition was dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding." *Id*. at 485. "Each component of the § 2253(c) showing is part of a threshold inquiry, and a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments." *Id*. The Court in *Slack* acknowledged that this rule meant the district court may deny a COA without reaching the underlying constitutional issues, but noted that *Ashwander v. TVA*, 297 U.S. 288, 347 (1936), allowed and even encouraged the district court to decide the procedural issues first. *Id*. at 484.

Here, the Court dismissed the petition on procedural grounds. Therefore, the Court first looks to the procedural part of the inquiry to determine whether it should issue a COA. Petitioner has failed to assert that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Petitioner only states that he "seeks [a] Certificate of Appealability in this matter to address the issues Stated by the Court." (Dkt. 10.)

Even if the Court construed the Petitioner's statement as a challenge to the Court's procedural holding, the Petitioner still does not meet the requirement to obtain a COA. In the instant action, a clear procedural bar exists. *Porterfield v. Bell*, 258 F.3d 484, 486 (6th Cir. 2001)

("Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further") (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Petitioner was extradited to the United States from Canada in 1991. He was extradited from Maine to Ohio on April 7, 2011. He waited until July 21, 2014, to file his habeas corpus petition. The basis for his claims arose many years prior to the filing of the instant habeas corpus petition. The Petitioner provided no reason for the filing delay. The Petitioner's delay is unreasonable. *See, e.g., Craven v. United States*, 26 F. App'x 417, 419 (6th Cir. 2001) (seven-year delay is unreasonable when Petitioner does not offer any reason for the delay and a delay of this length does not constitute an exercise of reasonable diligence); *Haddad v. United States*, 07-cv-12540, 2007 WL 7230219 (E.D. Mich. Oct. 26, 2007) (ten-year delay is unreasonable); *United States v. Dyer*, 136 F.3d 417, 429 (5th Cir.1998) (nine-year delay is unreasonable); *Telink v. United States*, 24 F.3d 42, 48 (9th Cir.1994) (nearly five years is unreasonable). Plainly, his claims are time-barred and no reasonable jurist could conclude that the Court erred.

For the reasons discussed above, the Court hereby **DENIES** Petitioner's request for a COA. (Dkt. 10.)

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE