

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11998

BRETT W. CORMIER,

Petitioner-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-80170-WPD

Before ROSENBAUM, LAGOA, and MARCUS, Circuit Judges.

LAGOA, Circuit Judge:

Brett W. Cormier appeals the dismissal of his habeas petition as untimely. Specifically, he argues that the district court erred by concluding that his state motion challenging his restitution sentence did not toll the Antiterrorism and Effective Death Penalty

Act's ("AEDPA") statute of limitations on habeas petitions. As to the merits of his petition, Cormier argues that the district court erred by holding in the alternative that he did not raise colorable ineffective-assistance-of-counsel and due process claims.

After careful consideration and with the benefit of oral argument, we affirm.¹

I. FACTUAL AND PROCEDURAL HISTORY

In 2005 and 2006, Cormier owned a tile company and recruited Richard Lardner, Tim Teufel, and Howard Johnson to invest in three new tile stores he was planning on opening. Lardner invested \$500,000 to establish Wellington Distributors SFLLC, Teufel invested \$600,000 to establish GSL Distributors LLC, and Johnson invested \$175,000 to establish Wellington Tile Distributors of South Florida. Cormier's contracts with Lardner, Teufel, and Johnson included an option to withdraw from the business partnership, whereby they would be refunded a portion of their investments. When the business partnerships deteriorated, Cormier could not pay the full amount owed. A police investigation revealed that Cormier used the investors' money for personal expenses.

On March 21, 2013, a state court jury convicted Cormier of two counts of first-degree grand theft over \$100,000 and one count

¹ We thank Cormier's court-appointed counsel in this appeal, Brandon Sadowsky and Dwayne A. Robinson of Kozyak Tropin & Throckmorton LLP, for their capable service.

23-11998

Opinion of the Court

3

of second-degree grand theft over \$20,000. On June 17, 2013, Cormier was sentenced to fifteen years' imprisonment, and on July 1, 2013, the state trial court entered three separate orders requiring Cormier to pay a total of \$835,000 in restitution to the investors.

On November 12, 2015, Florida's Fourth District Court of Appeal affirmed Cormier's sentence. On January 7, 2016, the Fourth DCA denied Cormier's motion for rehearing and his conviction became final ninety days later. Just before the conviction became final, Cormier filed a Fla. R. Crim. P. 3.800(c) motion requesting a reduction in his fifteen-years' imprisonment. That motion was denied on April 10, 2016.

On July 21, 2016, 102 days after his Rule 3.800(c) motion was denied, Cormier mailed a Fla. R. Crim. P. 3.800(a) motion requesting a reduction in the restitution amount owed to Lardner. The inmate law clerk who mailed the motion told Cormier that courts take more than a year to decide these motions. As discussed later, however, Cormier's motion was never docketed by the state court.

In December 2017, approximately 600 days after his Rule 3.800(c) motion was denied, Cormier checked on his Rule 3.800(a) motion for the first time. A different inmate law clerk told him that if his motion was not ruled upon within thirty days, it was considered denied. On December 19, 2017, Cormier filed a state court motion for post-conviction relief, which was denied on September 30, 2021, and became final for purposes of exhausting state remedies on December 5, 2022.

In January 2023, Cormier filed a habeas petition in federal district court and argued that the State did not meet its burden of proof at trial and that his trial counsel was ineffective. The State moved to dismiss Cormier’s petition as untimely because AEDPA’s one-year statute of limitations on habeas petitions began when the state court denied Cormier’s Rule 3.800(c) motion on April 10, 2016, and lapsed before he filed his state motion for post-conviction relief on December 19, 2017. In response, Cormier contended that on July 21, 2016, he mailed his Rule 3.800(a) motion to reduce restitution but only recently discovered that it was not docketed when he reviewed the state court docket appended to the State’s motion. Cormier maintained that his petition was timely because his mailed-but-undocketed Rule 3.800(a) motion was mailed but undocketed, so it tolled the statute of limitations pursuant to AEDPA’s tolling provision, 28 U.S.C. § 2244(d)(2).

On June 6, 2023, the district court dismissed Cormier’s habeas petition as untimely because Cormier’s restitution motion was not a challenge to the relevant conviction or sentence and thus, did not toll the statute of limitations. In support of its decision, the district court cited unpublished district court decisions holding the same. *See, e.g., Arriaga v. Gonzales*, No. 13-cv-1372, 2014 WL 5661023, at *10 (C.D. Cal. Oct. 31, 2014); *Ruza v. Mich. Dep’t of Corr.*, No. 20-cv-0808, 2021 WL 3640067, at *6 (W.D. Mich. Jul. 9, 2021) (holding that an attack on restitution is not an attack on the “part of the judgment of sentence pertinent to his habeas petition” and “therefore, do not toll the period of limitation”). The district court also concluded that no basis for equitable tolling was requested or

23-11998

Opinion of the Court

5

shown by Cormier. Moreover, in its analysis of the merits, the district court was unpersuaded by Cormier’s ineffective-assistance-of-counsel and due process claims.

On June 14, 2023, Cormier appealed the district court’s decision. On December 20, 2023, this Court granted Cormier a Certificate of Appealability (“COA”) on the following issue:

Whether the district court erred by finding that Cormier’s 28 U.S.C. § 2254 petition, which facially stated at least one valid claim of the denial of a constitutional right, was untimely, based on its determination that his undocketed Rule 3.800(a) motion, challenging restitution, was not a proper tolling motion?

II. STANDARD OF REVIEW

We review de novo the district court’s dismissal of a habeas petition as untimely. *Damren v. Florida*, 776 F.3d 816, 820 (11th Cir. 2015).

III. ANALYSIS

As an initial matter, we briefly address the scope of Cormier’s appeal to determine whether vacatur of the COA is appropriate. See *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014) (en banc).

AEDPA’s § 2253 states that a COA “may issue ... only if the applicant has made a substantial showing of the denial of a consti-

tutional right.” In *Spencer v. United States*, we interpreted this provision to mean that a COA, “whether issued by this Court or a district court, must specify what constitutional issue jurists of reason would find debatable,” “[e]ven when a prisoner seeks to appeal a procedural error[.]” 773 F.3d at 1138. Accord *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Vacatur may sometimes be required when a COA fails to specify the appropriate issues. See *Spencer*, 773 F.3d at 1138. But we may also “exercis[e] our discretion” and “rule which issues raised by the petitioner warrant a COA.” *Putman v. Head*, 268 F.3d 1223, 1228 (11th Cir. 2001).

Here, we conclude that though the COA identifies a procedural timeliness issue, it also expressly recognizes that Cormier’s petition “facially stated at least one valid claim of the denial of a constitutional right.” After reviewing the record, we conclude that Cormier has made the necessary substantial showing for his constitutional claims for ineffective-assistance-of-counsel and a due process violation.² See *Murray v. United States*, 145 F.3d 1249, 1251 (11th Cir. 1998) (“[W]e will construe the issue specification [in a COA] in light of the pleadings and other parts of the record.”). Accordingly, we amend the COA to include the statute-of-limitations issue and Cormier’s underlying constitutional claims. See *Putman*, 268 F.3d at 1228–29.

² Regarding Cormier’s arguments on appeal that he is entitled to equitable tolling and the actual innocence exception for timeliness, these issues are not in the COA and are, thus, outside the scope of our review. See *Rhode v. United States*, 583 F.3d 1289, 1290–91 (11th Cir. 2009).

23-11998

Opinion of the Court

7

Regarding AEDPA's statute of limitations, Cormier argues that his federal habeas petition was timely because his challenge to the restitution sentence was a challenge to the "pertinent judgment," and therefore the statute of limitations was tolled. *See* 28 U.S.C. § 2244(d)(2).

AEDPA requires a prisoner to file a habeas petition within one year from the latest of four triggering events, including when the state judgment becomes final. 28 U.S.C. § 2244(d)(1)(A). A state judgment becomes final, for example, ninety days after the state appeals court affirms the judgment. *Nix v. Sec'y for Dep't of Corr.*, 393 F.3d 1235, 1236 (11th Cir. 2004). But the statute of limitations is tolled for "[t]he 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[.]" *Id.* § 2244(d)(2). Here, since a Rule 3.800(a) motion is an application for review under § 2244(d)(2), *see Hall v. Sec'y, Dep't of Corr.*, 921 F.3d 983, 987 (11th Cir. 2019), and the parties do not dispute that the motion was properly filed, so long as it was "with respect to the pertinent judgment or claim," Cormier's Rule 3.800(a) motion had a tolling effect.

The legal question on appeal poses an issue of first impression for this Circuit: whether a motion challenging a restitution sentence is a challenge "with respect to the pertinent judgment." If it is, Cormier's petition was timely and we advance to the merits of his argument; if not, his petition was properly dismissed by the district court.

At the outset, Cormier is correct that restitution is part of a judgment. This is because a judgment includes a sentence. *See Burton v. Stewart*, 549 U.S. 147, 156 (2007) (“Final judgment in a criminal case means sentence. The sentence is the judgment.”) (citing *Berman v. United States*, 302 U.S. 211, 212 (1937)); *Osbourne v. Sec’y, Fla. Dep’t of Corr.*, 968 F.3d 1261, 1264 (11th Cir. 2020) (“The conviction and sentence together make up the criminal judgment.”). And an order for restitution is part of the sentence. *See Manrique v. United States*, 581 U.S. 116, 118 (2017) (“Sentencing courts are required to impose restitution as part of the sentence for specified crimes.”); *Advisory Opinion to the Governor re Implementation of Amendment 4, The Voting Restoration Amendment*, 288 So. 3d 1070, 1081 (Fla. 2020) (holding that satisfying “all terms of sentence” encompasses fulfilling any “financial obligations, such as fines, fees and restitution imposed by the court in the sentencing order”).

But when viewing the tolling provision through the prism of habeas, it becomes apparent that the “judgment” referred to in the tolling provision is the custody sentence by which the petitioner is detained. *Accord Magwood v. Patterson*, 561 U.S. 320, 332 (2010) (declining to read the term “application” as used in § 2244(b) “in a vacuum”). The “historic and great usage of the writ [of habeas corpus] ... is to produce the body of a person before a court for whatever purpose might be essential to the proper disposition of a cause.” *Price v. Johnston*, 334 U.S. 266, 283 (1948). Indeed, a prisoner seeking habeas relief only does so to “claim[] the right to be released” and cannot seek vacatur of a sentence that does not relate to his custody. *See Mamone v. United States*, 559 F.3d 1209, 1211

23-11998

Opinion of the Court

9

(11th Cir. 2009). *See also* *Blaik v. United States*, 161 F.3d 1341, 1343 (11th Cir. 1998); *Arnaiz v. Warden, Federal Satellite Low*, 594 F.3d 1326, 1330 (11th Cir. 2010) (“[H]abeas corpus cannot be used to challenge just the restitution part of a sentence when the custody supporting our jurisdiction is actual imprisonment.”); 28 U.S.C. § 2254(a). This means that “the judgment to which AEDPA refers is the underlying conviction and most recent sentence that authorizes the petitioner’s current detention.” *Ferreira v. Sec’y, Dep’t of Corr.*, 494 F.3d 1286, 1292 (11th Cir. 2007).

Additionally, AEDPA’s text makes clear that a tolling motion must challenge the petitioner’s detention and not any ancillary components of a sentence. *See Magwood*, 561 U.S. at 331–32. AEDPA’s statute of limitations governs “an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a state court.” 28 U.S.C. § 2244(d)(1). AEDPA also tolls the limitations period when “a properly filed application for State post-conviction or other collateral review with respect to the *pertinent* judgment or claim is pending.” *Id.* § 2244(d)(2) (emphasis added). The word “pertinent” modifies “judgment” and means “having a clear decisive relevance to the matter in hand.” *Pertinent*, Merriam-Webster’s Collegiate Dictionary (10th ed. 1996). *Accord Pertinent*, Black’s Law Dictionary (12th ed. 2024) (defining “pertinent” as “[o]f, relating to, or involving the particular issue at hand”). Taken together, AEDPA’s statute of limitations applies to a petition challenging a state court judgment pursuant to which a person is in

custody and is tolled when post-conviction or other collateral review with respect to that custody is pending.³ Put differently, the “pertinent judgment” that must be challenged is the one imposing the petitioner’s detention. See *Patterson v. Sec’y, Fla. Dep’t of Corr.*, 849 F.3d 1321, 1325 (11th Cir. 2017) (en banc) (citing *Magwood*, 561 U.S. at 332)).⁴

Our conclusion here is consistent with our Circuit precedent holding that a modification to the non-custody aspect of a sentence

³ For this same reason, that § 2244(b) uses language specifying that its restrictions are for applications “under [§] 2254” and § 2244(d) is of no moment. The modifier “pertinent” refers to the same “judgment” referenced earlier in that same subsection (d) by which “a person [is] in custody.” To the extent there is any ambiguity, the statutory context and structure, addressed below, support this reading. See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (“The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”).

⁴ In support of his position, Cormier cites *Ford v. Moore* for the proposition that “the plain language of the statute merely demands a state challenge relate to the pertinent judgment or claim at issue.” 296 F.3d 1035, 1040 (11th Cir. 2002). But read in context, *Ford* is not dispositive. There, the petitioner’s Rule 3.800 motion challenged the legality of his fifty-seven years’ imprisonment and the parties agreed that the “motion constituted an application for collateral review with respect to the pertinent judgment.” *Id.* at 1037. The issue before us was whether a motion must “contain a federally cognizable claim” for it to toll AEDPA’s statute of limitations. *Id.* We held that a properly filed motion, whether “grounded in federal or state law,” has a tolling effect. *Id.* at 1038. So, we did not have occasion to address the issue before us now. And in any case, “regardless of what a court says in its opinion, the decision can hold nothing beyond the facts of that case.” *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010).

does not constitute a new judgment for purposes of AEDPA's restrictions on second and successive habeas petitions. In *Patterson v. Sec'y, Fla. Dep't of Corr.*, the en banc Eleventh Circuit addressed whether a state court's order vacating a chemical castration sentence was a "new judgment or order" permitting the petitioner to file a second habeas petition. 849 F.3d at 1323 (citing *Magwood*, 561 U.S. 324). The petitioner in *Patterson* was sentenced to life imprisonment and chemical castration and filed his initial federal habeas petition challenging his custody. *Id.* That petition was dismissed as untimely. *Id.* Then, the petitioner filed a Rule 3.800 motion challenging his chemical castration sentence. *Id.* The state court granted the petitioner's motion and the petitioner filed a second habeas petition. *Id.* In reviewing the denial of his second petition, the en banc Eleventh Circuit observed that "the text of the governing statute makes clear that the only judgment that counts for purposes of [§] 2244 is the judgment pursuant to which the prisoner is in custody." *Id.* at 1326 (citing *Magwood*, 561 U.S. at 332). We therefore concluded that the petitioner was barred from filing his second petition because the state court's order removing chemical castration from his sentence neither authorized his confinement nor addressed the term of his imprisonment. *Id.* at 1325.

Though *Patterson* addressed AEDPA's restriction on second and successive petitions, our interpretation of "judgment" is equally applicable in the context of AEDPA's tolling provision. Here, the state judgment challenged that counts for the tolling pro-

vision is the “judgment pursuant to which the prisoner is in custody” and the statute of limitations is tolled when a challenge to that custody is pending. *See id.* at 1326.

Interpreting AEDPA’s text through the prism of habeas aligns with the statutory structure of AEDPA’s statute of limitations provision. *See Robinson*, 519 U.S. at 341. AEDPA serves, in part, “to further the principles of comity, finality, and federalism” by encouraging “mutual respect and common purpose ... between the States and the federal courts” and “safeguard[ing] the States’ interest in the integrity of their criminal and collateral proceedings.” *Williams v. Taylor*, 529 U.S. 420, 436 (2000). *See also Morris v. Sec’y, Fla. Dep’t of Corr.*, 991 F.3d 1351, 1356 (11th Cir. 2021) (citing *Wright v. Sec’y for the Dep’t of Corr.*, 278 F.3d 1245, 1255 (11th Cir. 2002)). “Finality, in turn, is essential to achieving the goals of our criminal justice system.” *Patterson*, 849 F.3d at 1325. For example, “[d]eterrence depends upon the expectation that one violating the law will swiftly and certainly become subject to punishment.” *Id.* (citation modified).

AEDPA’s statutory structure promotes comity by affording the state ample opportunity to review its judgments before federal intervention and promotes finality by affording the prisoner swift review of the judgment ordering his confinement even if review of the non-custody aspects of his judgment (*e.g.*, restitution, chemical castration, etc.) remain pending in state court. *See, e.g., Chamblee v. Florida*, 905 F.3d 1192, 1198 (11th Cir. 2018) (holding that the statute of limitations began to run after the state court determined that

the petitioner's custody sentence was final, even though his challenge to the non-custody aspect of his sentence remained pending). Specifically, AEDPA's strict one-year statute of limitations in § 2244(d)(1) "promotes the exhaustion of state remedies by protecting a state prisoner's ability later to apply for federal habeas relief, while at the same time limiting the harm to the interest in finality by according tolling effect only to properly filed applications for State post-conviction or other collateral review" of the pertinent judgment vis-à-vis § 2244(d)(2). *Morris*, 991 F.3d at 1356 (citation modified).

Sections 2244(d)(1) and (d)(2) can only operate together if the petitioner is waiting to bring a habeas challenge in federal court because a challenge to the same custody sentence is pending in state court. *See Duncan v. Walker*, 533 U.S. 167, 179–180 (2001). A contrary reading of AEDPA's tolling provision would mean that a petitioner with a plausible habeas claim must wait for the non-custody aspects of his challenge to be adjudicated on appeal even though those aspects of his sentence are not reviewable under habeas. *See Mamone*, 559 F.3d at 1211. *Cf. Manrique v. United States*, 581 U.S. 116, 123 (2017) (recognizing an appealable judgment for each "an initial sentence that includes a term of imprisonment" and "a later order setting forth the final amount of restitution"). If this were true, the tolling provision would be indifferent to AEDPA's role in permitting challenges to state custody in federal court and the remedy afforded to successful petitioners. *See Blaik*, 161 F.3d at 1343. We thus conclude that a motion challenging restitution is not a challenge "with respect to the pertinent judgment."

Because we conclude that Cormier’s motion challenging his restitution sentence was not a tolling motion, Cormier’s habeas petition was untimely and we do not reach the merits of his constitutional claims.⁵ See *McNair v. Allen*, 515 F.3d 1168, 1170 (11th Cir. 2008)

IV. CONCLUSION

For the reasons discussed above, we affirm the district court’s order dismissing Cormier’s petition.

AFFIRMED.

⁵ On April 15, 2024, Cormier filed a motion to amend his § 2254 habeas petition. We deny his motion. Any amendment to his untimely petition at this stage of litigation would be futile because his petition would still be time-barred. See *Hall v. United Insurance Co. of America*, 367 F.3d 1255, 1262–63 (11th Cir. 2004).