

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-13321
Non-Argument Calendar

D.C. Docket No. 1:13-cv-00012-WS-B

MYRON CANTRELL JONES,

Petitioner-Appellant,

versus

GARY HETZEL,

Respondent-Appellee,

TONY PATTERSON,

Respondent.

Appeal from the United States District Court
for the Southern District of Alabama

(February 17, 2016)

Before WILSON, MARTIN and ROSENBAUM, Circuit Judges.

PER CURIAM:

Myron Cantrell Jones, a state prisoner proceeding pro se, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition as time-barred. The district court granted Jones a certificate of appealability (COA) on one issue: whether his § 2254 petition was timely filed under 28 U.S.C. § 2244(d)(1)(D). After careful review, we vacate the dismissal of Jones's petition and remand for the district court to address whether his petition is timely under § 2244(d)(1)(D), and if so to decide the merits.

I.

The state argues that the district court erred in granting a COA without addressing if jurists of reason would find it debatable whether Jones stated a valid claim on the merits. A district court may issue a COA in a § 2254 proceeding only if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(1)(A), (2). And the COA must indicate which specific constitutional issue underlies the petitioner's claim. Id. § 2253(c)(3). When the district court denies a habeas petition on procedural grounds, a COA should issue only if "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and . . . whether the district court was

correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 478, 120 S. Ct. 1595, 1601 (2000).

The district court’s COA complied with the § 2253(c) requirements. The district court ruled that jurists of reason would find it debatable whether the petition was barred by the statute of limitations and whether the petition stated a valid claim under Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763 (1972). Because the district court identified a debatable constitutional issue, we decline to vacate the COA.

II.

The state next argues that Jones’s petition was time-barred under 28 U.S.C. § 2244(d). We review de novo a district court’s dismissal of a habeas petition as untimely. Day v. Hall, 528 F.3d 1315, 1316 (11th Cir. 2008) (per curiam). We may vacate a judgment and remand for further explanation by the district court when a ruling fails to provide a sufficient basis for appellate review. See Broadwater v. United States, 292 F.3d 1302, 1303 (11th Cir. 2002) (per curiam).

The Anti-Terrorism and Effective Death Penalty Act of 1996 sets a one-year limitations period in which a state prisoner may file a habeas petition. 28 U.S.C. § 2244(d)(1). The one-year period begins to run from the latest of four triggering events:

- (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.

Id.

The state argues that Jones's petition was untimely under § 2244(d)(1)(A). Jones's conviction became final on June 8, 2005. The one-year limitations period was tolled 352 days later on May 26, 2006, when Jones filed his first state postconviction petition under Alabama Rule of Criminal Procedure 32. See id. § 2244(d)(2). When that proceeding became final on May 23, 2008, the state argues Jones had 13 days remaining to file a § 2244 petition absent another tolling event. Jones did not submit his § 2244 petition until January 10, 2013, years after the remaining 13 days of the limitations period had run.

Jones argues that his petition is timely under § 2244(d)(1)(D) because the claim presented¹ was based on newly discovered evidence that could not have been uncovered earlier with due diligence. The evidence Jones relies on for this argument is a sworn affidavit from the state's key witness, Michael Booker, signed on March 11, 2011. Although Booker testified against Jones at trial, Booker later admitted in the affidavit that he offered false testimony in exchange for assistance with cases that were pending against him. Jones discovered the existence of the affidavit on March 15, 2011 and filed a second Rule 32 petition on March 23, 2011. This petition remained pending when Jones filed the § 2244 petition now before us. If the limitations period runs from Jones's awareness of the affidavit—March 15, 2011—then this petition is timely under § 2244(d)(1)(D).

A court should begin the timeliness inquiry under § 2244(d)(1)(D) by determining whether the petitioner exercised due diligence with respect to the factual predicate of his claim. Aron v. United States, 291 F.3d 708, 711 (11th Cir. 2002) (considering due diligence under the analogous statute of limitations for federal prisoners in 28 U.S.C. § 2255). If a petitioner exercises due diligence, then

¹ Jones alleges that the state presented false evidence at his trial in violation of Giglio. To establish a Giglio claim, a habeas petitioner must prove: “(1) the prosecutor knowingly used perjured testimony or failed to correct what he subsequently learned was false testimony; and (2) such use was material, i.e., that there is any reasonable likelihood that the false testimony could . . . have affected the judgment.” Guzman v. Sec’y, Dep’t of Corr., 663 F.3d 1336, 1348 (11th Cir. 2011) (quotation omitted) (alteration adopted).

the one-year limitations period begins to run on the date the petitioner actually discovers the relevant facts supporting his claim. Id.

The “factual predicate” of a habeas claim consists of the “vital facts” of a petitioner’s claim, not “[c]onclusions drawn from preexisting facts.” Cole v. Warden, Ga. State Prison, 768 F.3d 1150, 1155 (11th Cir. 2014) (quotation omitted). Due diligence requires the petitioner to make “reasonable efforts” to discover the factual predicate for his claim. Aron, 291 F.3d at 712. The due diligence inquiry is individualized and considers the petitioner’s “conditions of confinement and the reality of the prison system.” Id. (quotation omitted).

We vacate the district court’s dismissal of Jones’s petition and remand the case because the district court did not explicitly analyze whether the petition was timely filed under § 2244(d)(1)(D). In her report and recommendation (R&R), the magistrate judge determined that the petition was untimely under § 2244(d)(1)(A) but did not analyze whether Jones presented a newly discovered factual predicate or exercised due diligence under § 2244(d)(1)(D). The district court adopted the R&R after conducting de novo review, but it also did not address whether Jones’s petition was timely under § 2244(d)(1)(D).

In its later order granting a COA, the district court said that it did not “purposely reject” Jones’s § 2244(d)(1)(D) argument by adopting the R&R. We are not clear from this statement whether the district court actually ruled on the

petition's timeliness of the petition under § 2244(d)(1)(D). We vacate the dismissal of the petition and remand the case for an explanation of the district court's factual and legal conclusions on the § 2244(d)(1)(D) issue.

VACATED AND REMANDED.