IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH BLEA
Petitioner

V.

RICHARD MARTINEZ AND
ATTORNEY GENERAL OF THE
STATE OF NEW MEXICO
Respondents

No. 23-2191
(D.C. No. 2:20-CV-00986-JCH-JHR)
(D.N.M.)

APPLICATION FOR EXTENSION OF TIME FOR FILING A PETITION FOR WRIT OF CERTIORARI TO THE TENTH CIRCUIT COURT OF APPEALS

COMES NOW, Joseph Blea, respectfully requesting the Honorable Court to grant a 60-day extension of time for filing a Writ of Certiorari to the Tenth Circuit Court of Appeals pursuant to Supreme Court of the United States Rule 13(5).

Petitioner's request should be granted for the following reasons:

(1) On August 1, 2024, the United States Court of Appeals for the Tenth Circuit denied petitioner's application for a certificate of appealability (See Courts' opinion, Doc. 41 (Included));

(2) Under 28 U.S.C. Section 1257(a), federal review of state-court judgements may only occur in the United States Supreme Court. Thus, District Courts lack jurisdiction to review final state-court judgements;

(3) The matter of legislative extensions of unexpired statutes of limitations has not directly been addressed by the United States Supreme Court. See State v. Morales, 2008 NMCA 155, ¶13, 145 N.M. 259, 96 P.3d 490; United States v. Glenn, 2021 U.S. App. LEXIS 36680 at 6;

(4) Such matter is in dire need of clarification especially in an instance wherein the defendant has a vested or substantive right in the original limitations period. Simply, wherein a vested or substantive right in the original limitations period exists, Retroactive APPLICATION of an amendatory act enlarging the time period would NOT OPERATE PROSPECTIVELY and would be in violation of the Ex Post Facto Clause of the United States Constitution;

(5) United States Supreme Court Rule 10 (a)(b)(c) is qualified by such lack of clarification. Cf. United States v. DaliaFerro, 979 F.2d 1399 (10th Cir. Court of Appeals, 1992); United States v. Richardson, 512 F.2d 105 (3rd Cir. Court of Appeals, 1975). The distinction in these two cases is that on the amendatory act's effective date, the defendant in DaliaFerro had incurred no liability, whereas in Richardson, defendant was already subject to liability resulting from an accrued cause of action;

(6) Petitioner is a layman of the law and is proceeding PRO SE;

(7) Petitioner is incarcerated at the Otero County Prison Facility in Chaparral, New Mexico (OCPF);

(8) Petitioner's access to OCPF's Law Library is typically restricted to a few hours a week;

(9) Petitioner's access to OCPF's Law Library was further impeded by a medical emergency that required admission to Memorial Hospital in Las Cruces, New Mexico on August 18 and 19th, 2024. Petitioner underwent a 'Blood Transfusion' that required three pouches of 'Whole Blood' rather than 'Plasma'. Petitioner's hemoglobin levels had dropped to 37% of normal;

(10) Petitioner's physical condition for several weeks prior to admission to the hospital and for several weeks during recovery severely limited petitioners ability to function. Simply, the lack of oxygen, the shortness of breath, the fatigue, the

NAUSEA, AND THE MUSCLE SPASMS WERE DEBILITATING;

(11) THE INTERESTS OF JUSTICE WILL NOT BE SERVED ABSENT THE OPPORTUNITY TO THOROUGHLY REVIEW THE APPLICABLE PROCEDURAL RULES AND LAWS RELEVANT TO THE FURTHERANCE OF COLLATERAL REVIEW REGARDING CLAIMS OF CONSTITUTIONAL VIOLATIONS OCCURRING IN STATE COURT;

(12) PETITIONER CONTENDS THAT DUE PROCESS ITSELF NECESSARILY REQUIRES PETITIONER TO HAVE A MEANINGFUL OPPORTUNITY TO SEEK UNITED STATES SUPREME COURT REVIEW OF THE UNITED STATES TENTH CIRCUIT COURT OF APPEAL'S FINAL JUDGEMENT. CALIFORNIA V. TROMBETTA, 467 U.S. 479, 485 (1984); UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT.

(13) THE UNITED STATES COURT OF APPEAL'S FINAL ORDER (DOC. 41) DID NOT INFORM PETITIONER OF HIS ABILITY TO PETITION THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE ISSUES PRESENTED BY PETITIONER.

FURTHERMORE, should the HONORABLE COURT GRANT THE REQUESTED RELIEF, PETITIONER BELIEVES HIS WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT TO THE TENTH CIRCUIT COURT OF APPEALS WILL BE TIMELY RECEIVED if filed ON OR BEFORE DECEMBER 30, 2024. SEE EXHIBIT 1. THE UNITED STATES COURT OF APPEAL'S FINAL ORDER WAS FILED AUGUST 1, 2024.

Respectfully Submitted,

Joseph Bleo

PETITIONER PRO SE

10 MCGREGOR RANGE RD.

CHAPARRAL, NEW MEXICO

88081

I, the undersigned, state that I am the petitioner in this action. I affirm under penalty of perjury under the laws of the State of New Mexico that on October 3, 2024, I deposited this "Application for extension of time for filing a Petition for Writ of Certiorari to the Tenth Circuit Court of Appeals" in the internal mail system of the institution in which I am confined, properly addressed with any necessary postage prepaid, for forwarding to the Supreme Court of the United States at the following address:

Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Joseph Blea #25100
10 McGregor Range Rd
Chaparral, New Mexico
88081

In addition, I hereby certify that a copy of this Application was placed, with first-class postage prepaid, in the internal mail system of the institution in which I am confined and addressed to: Raul Torrez - Attorney General, Jane A. Bernstein - New Mexico Attorney General, Attorneys for Respondents, 201 Third St. N.W. Suite 300, Albuquerque, New Mexico 87102 on the following date: October 3, 2024.

Respectfully Submitted,

Joseph Blea #25100
10 McGregor Range Rd.
Chaparral, New Mexico
88081

FILED
United States Court of Appeals
Tenth Circuit

August 1, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JOSEPH BLEA,

Petitioner - Appellant,

v.

RICHARD MARTINEZ; ATTORNEY GENERAL OF THE STATE OF NEW MEXICO,

Respondents - Appellees.

No. 23-2191
(D.C. No. 2:20-CV-00986-JCH-JHR)
(D. N.M.)

Doc. 41

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **BACHARACH**, **EID**, and **FEDERICO**, Circuit Judges.

New Mexico prisoner Joseph Blea, proceeding pro se[1] seeks a certificate of appealability (COA) to appeal the district court's denial of his petition for

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] "Because [Mr. Blea] appeared pro se, we liberally construe his pleadings. Nevertheless, he . . . . must comply with the same rules of procedure as other litigants." *Requena v. Roberts*, 893 F.3d 1195, 1205 (10th Cir. 2018) (internal citations omitted). And in the course of our review, "[w]e will not act as his counsel, searching the record for arguments he could have, but did not, make." *Id.*

Exhibit 1

habeas corpus under 28 U.S.C. § 2254. We deny a COA and dismiss this matter.

BACKGROUND

A New Mexico jury found Mr. Blea guilty of two first-degree felonies—criminal sexual penetration and kidnapping. Mr. Blea committed the crimes in 1988. At that time, New Mexico's statute of limitations for first-degree felonies was fifteen years. But in 1997, the New Mexico legislature amended N.M. Stat. Ann. § 30-1-8 to provide: "[F]or a capital felony or a first[-]degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime."

State prosecutors charged, tried, and convicted Mr. Blea in 2015, more than fifteen years after he committed the crimes. The New Mexico district and appellate courts upheld the conviction on direct appeal and on state collateral review.

Mr. Blea filed a § 2254 petition in 2020, arguing, as he had throughout his state appeals, that he had a right to the original fifteen-year limitations period that expired prior to his prosecution and that allowing his prosecution under the 1997 amendment violated the *Ex Post Facto* Clause of the Constitution. He later sought to amend his § 2254 petition to add a claim that his trial defense counsel was constitutionally ineffective for failing to adequately raise this argument.

A magistrate judge recommended the district court deny the petition. The magistrate judge concluded Mr. Blea had no vested right to the shelter under the fifteen-year duration of the original statute of limitations and there was no violation of the *Ex Post Facto* Clause when the state applied the expanded limitations period to his prosecution.

Mr. Blea filed timely objections. The district court overruled the objections, adopted the magistrate judge's recommendations, denied the § 2254 petition, denied leave to amend as futile, and denied a COA. The district court concluded Mr. Blea failed to show how the state court acted contrary to or unreasonably applied clearly established federal law when it rejected his statute-of-limitations and *Ex Post Facto* Clause arguments. This COA application followed.

DISCUSSION

To appeal the denial of his § 2254 petition, Mr. Blea must obtain a COA by "showing that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted). Our consideration of a COA request incorporates the "deferential treatment of state court decisions" in the Antiterrorism and Effective Death Penalty Act (AEDPA). *Dockins v. Hines*, 374 F.3d 935, 938 (10th Cir. 2004). Under AEDPA,

to obtain habeas relief, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

The Supreme Court has held "a law enacted *after* expiration of a previously applicable limitations period violates the *Ex Post Facto* Clause when it is applied to revive a previously time-barred prosecution." *Stogner v. California*, 539 U.S. 607, 632–33 (2003) (emphasis added). But "to hold that such a law is *ex post facto* does not prevent the State from extending time limits for . . . prosecutions not yet time barred." *Id.* at 632; *see also United States v. Taliaferro*, 979 F.2d 1399, 1402 (10th Cir. 1992) ("[T]he application of an extended statute of limitations to offenses occurring prior to the legislative extension, where the prior and shorter statute of limitations has not run as of the date of such extension, does not violate the [*E*]*x* [*P*]*ost* [*F*]*acto* [C]lause.").

In Mr. Blea's case, the New Mexico legislature extended the relevant statute of limitations in 1997, when the fifteen-year statute of limitations had not yet run. So none of the arguments in Mr. Blea's COA application show a constitutional violation from its extension. *See Stogner*, 539 U.S. at 632–33.

Mr. Blea argues at length that his case is distinguishable from *State v. Morales*, 236 P.3d 24, 26 (N.M. 2010), in which the New Mexico Supreme

Court held the 1997 amended statute of limitations applied to "capital felonies and first-degree violent felonies committed after July 1, 1982." *See* Aplt. Opening Br. & Appl. for COA at 6–14, 17–21, 25–26. He strains to distinguish *Morales* because its holding defeats his claim. But "a state court's interpretation of state law, . . ., binds a federal court sitting in habeas corpus." *Hawes v. Pacheco*, 7 F.4th 1252, 1264 (10th Cir. 2021). So "to the extent [Mr. Blea] argues the state court erroneously interpreted and applied state law, that does not warrant [federal] habeas relief." *Id.* (internal quotation marks and brackets omitted).

Also unavailing are Mr. Blea's arguments that his prosecution was unconstitutional based on (a) the report of his crime to law enforcement in 1989 or (b) the passage in 1987 of N.M. Stat. Ann. § 30-1-9.1 ("The applicable time period for commencing prosecution . . . shall not commence to run for an alleged violation of [the sexual penetration statute] until the victim attains the age of eighteen or the violation is reported to a law enforcement agency, whichever occurs first."). The Supreme Court and this court have held the extension of the statute of limitations does not violate the Constitution. *See Stogner*, 539 U.S. at 632–33; *Taliaferro*, 979 F.2d at 1402. So reasonable jurists could not debate the district court's dismissal of Mr. Blea's § 2254 claims.

We also reject Mr. Blea's argument that the district court erred in ruling without first holding an evidentiary hearing. Because we would review a

district court's denial of an evidentiary hearing for abuse of discretion during a merits appeal, the Supreme Court has accepted a formulation of "the COA question" as "whether a reasonable jurist could conclude that the District Court abused its discretion." *Buck v. Davis*, 580 U.S. 100, 123 (2017). Where, as here, a court can resolve a habeas claim on the existing record, it does not abuse its discretion when it denies an evidentiary hearing. *Torres v. Mullin*, 317 F.3d 1145, 1161 (10th Cir. 2003). The district court was able to resolve Mr. Blea's claims on the record, and he has not shown what evidence he would have presented at a hearing that would have made a difference. A reasonable jurist could not conclude the district court abused its discretion in not holding an evidentiary hearing.

Finally, Mr. Blea claims his trial defense counsel was ineffective for failing to raise and argue that the statute of limitations barred his prosecution. We reject this argument because a counsel cannot be ineffective for failing to raise a claim that lacks merit. *See Fairchild v. Trammel*, 784 F.3d 702, 724 (10th Cir. 2015).

CONCLUSION

We deny a COA and dismiss this matter.

Entered for the Court

Richard E.N. Federico
Circuit Judge