

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Scott Wade Ramey,

Case No. 25-cv-1722 (JWB/DJF)

Petitioner,

v.

REPORT AND RECOMMENDATION

Awal Abot,

Respondent.

This matter is before the Court on Petitioner Scott Wade Ramey's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody ("Petition") (ECF No. 1). After a jury found Mr. Ramey guilty in state court on counts of first and third-degree criminal sexual conduct, a judge sentenced him to a 280-month term of imprisonment. *See State v. Ramey*, No. A21-1326, 2022 WL 3149072, at *1-2 (Minn. Ct. App. Aug. 8, 2022). Mr. Ramey's Petition challenges the legality of those convictions. But upon reviewing Mr. Ramey's Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court concludes that the Petition is plainly untimely. *See* 28 U.S.C. § 2244(d). Accordingly, the Court recommends that Mr. Ramey's Petition be summarily denied.

Section 2244(d) establishes a one-year limitations period as follows:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(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.

(2) The 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 shall not be counted toward any period of limitation under this subsection.

Only two of those statutory provisions are relevant to this case.¹ The first is Section 2244(d)(1)(A), which establishes the date on which the one-year limitations period began for Mr. Ramey— “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” The Minnesota Supreme Court declined review of Mr. Ramey’s direct appeal on November 15, 2022. Mr. Ramey then had ninety days in which to file a petition for a writ of certiorari with the Supreme Court of the United States. *See Jihad v. Hvass*, 267 F.3d 803, 805 (8th Cir. 2001) (noting that “[i]t is settled that “the conclusion of direct review” includes the ninety days a state court defendant has to petition the Supreme Court of the United States for a writ of certiorari.”). Since Mr. Ramey did not file a petition for a writ of certiorari, the

¹ Section 2244(d)(1)(B) does not apply to this case because Mr. Ramey does not contend the State of Minnesota has ever impeded his ability to seek habeas relief. Section 2244(d)(1)(C) does not apply because Mr. Ramey is not seeking relief pursuant to a constitutional right that has been only recently recognized by the Supreme Court. Finally, Section 2244(d)(1)(D) does not apply because Mr. Ramey is not seeking relief based upon a factual predicate that only recently could have been discovered.

period during which Mr. Ramey could seek direct review expired on the certiorari deadline of February 13, 2023.

Three days later, on February 16, 2023, Mr. Ramey filed a petition for post-conviction relief in Minnesota state court—which implicates the second of the relevant Section 2244(d) provisions. Under Section 2244(d)(2), “[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 shall not be counted toward any period of limitation under this subsection.” Accordingly, the one-year limitation period was tolled from February 16, 2023 until the date when the Minnesota Supreme Court declined review of that petition, or December 19, 2023. *See Ramey v. State*, No. A23-0469, 2023 WL 5839154 (Minn. Ct. App. Sept. 5, 2023) (Minnesota Court of Appeals order opinion affirming the denial of the postconviction petition). The tolling period established by Section 2244(d)(2) then ended, and the one-year limitations period—with 362 days remaining—began to run again on that date.² Mr. Ramey’s one-year limitations deadline, after taking the tolling period into account, was December 15, 2024. Since that day was a Sunday, Mr. Ramey had one additional day in which to file his Petition. *See Fed. R. Civ. P. 6(a)(1)(B)*.

Mr. Ramey thus needed to file any petition challenging his convictions or sentence in federal court by no later than December 16, 2024. But Mr. Ramey did not place his Petition in the prison mail system until April 16, 2025. (*See* ECF No. 1 at 14; *see also Nichols v. Bowersox*, 172 F.3d 1068, 1077 (8th Cir. 1999) (en banc), holding that “for purposes of applying 28 U.S.C. § 2244(d), a pro se prisoner’s petition for a writ of habeas corpus is filed on the date it is delivered to prison authorities for mailing to the clerk of the court.”). This was four months too late.

² Unlike the limitations date established by Section 2244(d)(1)(A), the tolling period established by Section 2244(d)(2) ended when the Minnesota Supreme Court denied review of the case; not when Mr. Ramey’s certiorari deadline expired. *See Lawrence v. Florida*, 549 U.S. 327, 332 (2007).

There are two escape hatches from the limitations period under Section 2244(d), but neither of them applies here. First, Mr. Ramey does not proffer any reason to believe “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Lawrence*, 549 U.S. at 336 (internal quotations omitted). Mr. Ramey therefore is not entitled to equitable tolling of the limitations period. Second, Mr. Ramey has not made an adequate threshold showing of actual innocence to excuse compliance with the statutory limitations period.³ *See McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

The Court recommends that Mr. Ramey’s Petition be denied as untimely and this case be dismissed for these reasons. The Court accordingly recommends that his pending application to proceed *in forma pauperis* status (ECF No. 2) be denied as well. *See Kruger v. Erickson*, 77 F.3d 1071, 1074 n.3 (8th Cir. 1996) (per curiam). Finally, because the question is not a close one, the Court recommends that Mr. Ramey not be issued a certificate of appealability. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

RECOMMENDATION

Based on the foregoing, and on all the files, records, and proceedings herein, **IT IS
HEREBY RECOMMENDED THAT:**

1. Petitioner Scott Wade Ramey’s Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (ECF No.1) be **DENIED** as untimely;
2. This matter be **DISMISSED**;
3. Mr. Ramey’s application to proceed *in forma pauperis* status (ECF No. 2) be **DENIED**; and
4. No certificate of appealability be issued.

³ Mr. Ramey’s Petition appears to be premised largely on his unsupported contention that the alleged victim was lying. (See ECF No. 1 at 7.)

Dated: May 1, 2025

s/ Dulce J. Foster

DULCE J. FOSTER

United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).