

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Tria Evans v. Jeff Zmuda

Evans v. Zmuda · No. 26-3124-JWL · Decided May 27, 2026

SUMMARY

The United States District Court for the District of Kansas directs Kansas state prisoner Tria Evans to show cause why her 28 U.S.C. § 2254 habeas petition should not be dismissed with prejudice as untimely under AEDPA. The court provisionally grants leave to proceed in forma pauperis, substitutes Dona Hook as respondent, and denies the motion for appointment of counsel without prejudice. Evans is given until June 30, 2026, to respond.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	John W. Lungstrum
JURISDICTION	United States District Court for the District of Kansas
DECIDED	May 27, 2026
DOCKET	26-3124-JWL
DISPOSITION	other
PROCEDURAL POSTURE	Initial Rule 4 screening of a pro se 28 U.S.C. § 2254 petition. The court provisionally granted in forma pauperis status, denied appointment of counsel without prejudice, substituted the facility warden as respondent, and ordered the petitioner to show cause why the petition should not be dismissed with prejudice as untimely.
STANDARD OF REVIEW	Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review a habeas petition upon filing and dismiss it if it plainly appears from the petition and attached exhibits that the petitioner is not entitled to relief. Pro se filings are liberally construed, but the court does not act as the petitioner's advocate.
PRECEDENTIAL VALUE	unpublished
PARTIES	Tria Evans v. Jeff Zmuda, Dona Hook, substituted as Respondent

TOPICS

- federal habeas corpus
- statute of limitations
- actual innocence
- state post-conviction relief
- civil procedure

PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

Federal civil procedure

QUESTIONS PRESENTED

1. Whether the § 2254 petition appeared barred by AEDPA's one-year statute of limitations under 28 U.S.C. § 2244(d).
2. Whether Evans should receive statutory or equitable tolling sufficient to make the petition timely.
3. Whether Evans could invoke the actual-innocence gateway to overcome the apparent limitations bar.
4. Whether the court should appoint counsel at the preliminary Rule 4 screening stage.
5. Whether the proper respondent was the warden of the facility where Evans was confined rather than the named respondent.

HOLDINGS

1. The petition appeared untimely under AEDPA. Direct review ended when the ninety-day period for seeking United States Supreme Court review expired, causing the one-year limitation period to begin on November 5, 2021; even assuming statutory tolling for the state post-conviction proceedings from August 1, 2022 through May 20, 2025, the adjusted deadline was August 26, 2025, while the federal petition was filed on May 12, 2026.
2. Evans was given an opportunity to show that extraordinary circumstances beyond her control prevented timely filing and that she diligently pursued her claims; the court found no such circumstances apparent on the present record.
3. The actual-innocence gateway may permit consideration of an otherwise untimely habeas petition, but Evans must present new, reliable evidence not presented at trial showing that, in light of all the evidence, more likely than not no reasonable juror would have found her guilty beyond a reasonable doubt.
4. Appointment of counsel was denied without prejudice because there is no constitutional right to counsel in a federal habeas proceeding and the interests of justice did not require counsel at the preliminary screening stage.
5. The warden of the facility where a state prisoner is confined is the proper respondent in a habeas challenge to present physical confinement, so Dona Hook was substituted for Jeff Zmuda.

KEY QUOTATIONS

“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.” (Analysis)

“The federal habeas one-year limitation period, however, is subject to equitable tolling “in rare and exceptional circumstances.”” (Equitable Tolling)

“Actual innocence means ‘factual innocence not mere legal insufficiency.’” (Actual Innocence)

“Therefore, the Court will direct Petitioner to show cause in writing why this matter should not be dismissed

| *as time-barred.*” (Conclusion)

FACTUAL BACKGROUND

In March 2019, a Kansas jury convicted Evans of first-degree murder, conspiracy to commit murder, arson, and aggravated burglary. The state court imposed a hard-50 life term for murder and concurrent terms for the remaining offenses. The Kansas Supreme Court affirmed the convictions and sentences in 2021, and Evans did not petition the United States Supreme Court for certiorari. She filed a federal habeas petition on May 12, 2026, after pursuing state post-conviction relief.

PROCEDURAL HISTORY

A Kansas jury convicted Evans in 2019, and the Kansas Supreme Court affirmed her convictions and sentences on August 6, 2021. Evans did not seek United States Supreme Court review. She filed a K.S.A. 60-1507 motion in August 2022, initially in her criminal case, and later obtained state-court consideration; the Kansas Supreme Court denied review on May 20, 2025. Evans filed this federal § 2254 petition on May 12, 2026. On initial review, the district court calculated that even assuming statutory tolling from August 1, 2022 through May 20, 2025, the federal petition appeared untimely and issued a show-cause order rather than entering final dismissal.

DISPOSITION

other

CASES CITED

- *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)
- *Reynolds v. Perez*, 2026 WL 1083328, *1 (D. Kan. Apr. 22, 2026) (unpublished)
- *State v. Evans*, 313 Kan. 972, 973, 981, 993 (2021)
- *Hall v. Bellman*, 935 F.2d 1106, 1110 (10th Cir. 1991)
- *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005)
- *Preston v. Gibson*, 234 F.3d 1118, 1120 (10th Cir. 2000)
- *Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009)
- *United States v. Hurst*, 322 F.3d 1256, 1259, 1261-62 (10th Cir. 2003)
- *Harris v. Dinwiddie*, 642 F.3d 902, 906 & n.6 (10th Cir. 2011)
- *Stuart v. Utah*, 449 Fed. Appx. 736, 738 (10th Cir. Nov. 30, 2011) (unpublished)
- *Gibson v. Klinger*, 232 F.3d 799, 808 (10th Cir. 2000)
- *Marsh v. Soares*, 223 F.3d 127, 1220 (10th Cir. 2000)
- *Fontenot v. Crow*, 4 F.4th 982, 1030-31 (10th Cir. 2021)
- *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013)
- *Schlup v. Delo*, 513 U.S. 298, 324 (1995)
- *Taylor v. Powell*, 7 F.4th 920, 927 (10th Cir. 2021)
- *House v. Bell*, 547 U.S. 518, 538, 553 (2006)

- O'Bryant v. Oklahoma, 568 Fed. Appx. 632, 637 (10th Cir. 2014)
- Bousley v. United States, 523 U.S. 614, 623 (1998)
- Pennsylvania v. Finley, 481 U.S. 551, 555 (1987)
- Lomack v. Farris, 2025 WL 397520, *1 (10th Cir. Feb. 4, 2025) (unpublished)
- Coronado v. Ward, 517 F.3d 1212, 1218 (10th Cir. 2008)
- Swazo v. Wyoming Department of Corrections State Penitentiary Warden, 23 F.3d 332, 333 (10th Cir. 1994)
- Steffey v. Orman, 461 F.3d 1218, 1223 (10th Cir. 2006)
- Hill v. SmithKline Beecham Corp., 393 F.3d 1111, 1115 (10th Cir. 2004)
- Rucks v. Boergermann, 57 F.3d 978, 979 (10th Cir. 1995)

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