

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Cohee v. Yates

No. 18-6071, United States Court of Appeals for the Tenth Circuit (July 27, 2018)

SUMMARY

The Tenth Circuit denied a certificate of appealability (COA) and dismissed an appeal from the denial of a 28 U.S.C. § 2254 habeas petition as untimely. The court held that the AEDPA one-year limitations period began when the state conviction became final ten days after the guilty plea, and the petition filed over two years later was untimely absent equitable tolling. The petitioner’s claim of ineffective assistance of counsel for failing to communicate during the appeal period did not warrant equitable tolling because he failed to show diligent pursuit of his rights or that extraordinary circumstances beyond his control caused the delay. The court also rejected pro se arguments regarding trial court abuse of discretion and state appellate errors, as the petition was time-barred.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Carlos F. Lucero; Harris L. Hartz; Carolyn B. McHugh
JURISDICTION	Federal
DECIDED	July 27, 2018
DOCKET	18-6071
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from denial of habeas petition and denial of certificate of appealability
STANDARD OF REVIEW	Substantial showing of the denial of a constitutional right under 28 U.S.C. § 2253(c)(2)
PRECEDENTIAL VALUE	unpublished
PARTIES	Darrius Dajuan Cohee v. James Yates

TOPICS

- habeas corpus
- criminal procedure
- statute of limitations
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Cohee made a substantial showing of the denial of a constitutional right to warrant a COA.
2. Whether Cohee's § 2254 petition was untimely under AEDPA's one-year limitations period.
3. Whether Cohee was entitled to equitable tolling based on ineffective assistance of counsel, trial court abuse of discretion, or OCCA errors.

HOLDINGS

1. Cohee failed to make a substantial showing of the denial of a constitutional right, and his petition is untimely under AEDPA; equitable tolling is not warranted.

KEY QUOTATIONS

"We may issue a COA 'only if the applicant has made a substantial showing of the denial of a constitutional right.' 28 U.S.C. § 2253(c)(2). To satisfy this standard, Cohee must show 'that reasonable jurists could debate whether (or, for that matter, agree that) 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) (quotation omitted)." (2)

"But as the magistrate judge properly held, Cohee failed to show that he 'diligently pursue[d]' this claim below and has not 'demonstrate[d] that the failure to timely file was caused by extraordinary circumstances beyond his control.' Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000)." (3)

FACTUAL BACKGROUND

In February 2014, Cohee pled guilty in Oklahoma state court to conspiracy to traffic a controlled dangerous substance and aggravated trafficking in illegal drugs. He was sentenced to eighteen years' imprisonment. He did not file a direct appeal, and his attempts to obtain relief through collateral state proceedings were unsuccessful. He then filed a § 2254 habeas petition in federal district court on December 29, 2017.

PROCEDURAL HISTORY

Cohee filed a 28 U.S.C. § 2254 habeas petition in the Western District of Oklahoma. A magistrate judge recommended dismissal as untimely. The district court adopted the recommendation and dismissed the petition. Cohee appealed and sought a COA.

DISPOSITION

dismissed

CASES CITED

- Slack v. McDaniel, 529 U.S. 473 (2000)
- Preston v. Gibson, 234 F.3d 1118 (10th Cir. 2000)

- Clark v. Oklahoma, 468 F.3d 711 (10th Cir. 2006)
- Marsh v. Soares, 223 F.3d 1217 (10th Cir. 2000)
- Fisher v. Gibson, 262 F.3d 1135 (10th Cir. 2001)
- Carney v. Okla. Dep't of Pub. Safety, 875 F.3d 1347 (10th Cir. 2017)

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