

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Timothy Durley v. Kenya Mason

Case No. 22-cv-793-pp (E.D. Wis. Dec. 18, 2025) · No. 22-cv-793-pp · Decided December 18, 2025

SUMMARY

The United States District Court for the Eastern District of Wisconsin granted Timothy Durley’s motion to clarify or correct the case and his motion for leave to file a surreply. The court granted the respondent’s motion to dismiss Durley’s 28 U.S.C. § 2254 habeas petition because his claims were procedurally defaulted and he failed to establish actual innocence as an exception. The court dismissed the case and declined to issue a certificate of appealability.

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	December 18, 2025
DOCKET	22-cv-793-pp
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for a writ of habeas corpus under 28 U.S.C. § 2254. After permitting the petitioner to return to state court to exhaust unexhausted claims, the district court considered the original petition and additional ineffective-assistance claims docketed as a motion to reopen. The court granted the respondent's motion to dismiss, dismissed the case with prejudice, and declined to issue a certificate of appealability.
STANDARD OF REVIEW	Federal habeas review was barred when the state court's judgment rested on an adequate and independent state procedural ground, unless the petitioner established cause and prejudice or a fundamental miscarriage of justice. Actual innocence required new reliable evidence sufficient to show that, more likely than not, no reasonable juror would have found the petitioner guilty beyond a reasonable doubt. A certificate of appealability required a substantial showing of the denial of a constitutional right.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Timothy Durley v. Kenya Mason

TOPICS

federal habeas corpus

post-conviction relief

actual innocence

appellate procedure

federalism

PRACTICE AREAS

federal habeas corpus

state post-conviction relief

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether Durley's ineffective-assistance-of-trial-counsel claims were procedurally defaulted because he failed to properly pursue them through Wisconsin's post-conviction procedures.
2. Whether Durley's ineffective-assistance-of-appellate-counsel claims were procedurally defaulted because the Wisconsin Court of Appeals denied his Knight petition under an adequate and independent state procedural rule requiring a showing that the proposed claims were clearly stronger than the claims appellate counsel actually raised.
3. Whether Durley established cause and prejudice sufficient to excuse his procedural default.
4. Whether Durley established actual innocence under the fundamental-miscarriage-of-justice exception.
5. Whether to issue a certificate of appealability.

HOLDINGS

1. Durley's ineffective-assistance-of-trial-counsel claims were procedurally defaulted because he did not appeal the denial of his Wis. Stat. § 974.06 motion. His ineffective-assistance-of-appellate-counsel claims were also procedurally defaulted because the Wisconsin Court of Appeals denied them on the independent and adequate procedural ground that he had not shown that the proposed claims were clearly stronger than the issue actually raised on direct appeal.
2. Durley did not establish cause and prejudice sufficient to excuse his procedural default.
3. Durley failed to establish actual innocence and therefore could not invoke the fundamental-miscarriage-of-justice exception to procedural default.
4. The court declined to issue a certificate of appealability because no reasonable jurist could conclude that Durley had not procedurally defaulted his claims or had established actual innocence.

KEY QUOTATIONS

“The petitioner has procedurally defaulted on his ineffective assistance claims.” (Section IV.E.3)

“The petitioner has not demonstrated “that more likely than not, in light of the new evidence, no reasonable juror would find him guilty beyond a reasonable doubt.”” (Section IV.E.5)

“The court ORDERS that this case is DISMISSED WITH PREJUDICE.” (Conclusion)

FACTUAL BACKGROUND

Durley was convicted after a road-rage incident in which a man was shot in the chest. At trial, Durley's girlfriend, Velma Jackson, testified that she was riding in a van with Durley and saw him shoot the victim. Durley later relied on other witnesses' statements about an allegedly stolen van, telephone and cellular-tower evidence, and the victim's girlfriend's failure to identify him, but the district court found that this material was either previously available, cumulative, inconclusive, or inconsistent with Jackson's testimony.

PROCEDURAL HISTORY

Durley was convicted in Milwaukee County Circuit Court of second-degree reckless homicide and possession of a firearm by a prohibited person and received a sentence of nineteen years of initial confinement followed by ten years of extended supervision. The Wisconsin Court of Appeals summarily affirmed on direct review, and the Wisconsin Supreme Court denied review. Durley then filed a federal § 2254 petition raising claims that were initially unexhausted; the district court stayed and administratively closed the case to permit state-court exhaustion. After Durley pursued state post-conviction and habeas proceedings, the Wisconsin Court of Appeals denied his claims on procedural grounds, and the Wisconsin Supreme Court denied review and reconsideration. The federal district court held that the claims were procedurally defaulted, that Durley had not shown cause and prejudice, and that he had not established actual innocence.

DISPOSITION

dismissed

CASES CITED

- Bolton v. Akpore, 730 F.3d 685, 694-95 (7th Cir.)
- Weddington v. Zatecky, 721 F.3d 456, 465 (7th Cir.)
- Villanueva v. Anglin, 719 F.3d 769, 775 (7th Cir.)
- Garcia v. Cromwell, 28 F.4th 764, 774-75 (7th Cir.)
- Thomas v. Williams, 822 F.3d 378, 384 (7th Cir.)
- Johnson v. Thurmer, 624 F.3d 786 (7th Cir.)
- Page v. Frank, 343 F.3d 901, 906 (7th Cir.)
- State v. Escalona-Naranjo, 185 Wis. 2d 168, 181-82
- State v. Pozo, 258 Wis. 2d 796, 802 (Wis. Ct. App.)
- State v. Machner, 92 Wis. 2d 797, 804 (Wis. Ct. App.)
- State ex rel. Rothering v. McCaughtry, 205 Wis. 2d 675, 681 (Wis. Ct. App.)
- Triplett v. McDermott, 996 F.3d 825, 829 (7th Cir.)
- Ylst v. Nunnemaker, 501 U.S. 797, 805 (1991)
- Holmes v. Hardy, 608 F.3d 963, 967 (7th Cir.)
- Thompkins v. Pfister, 698 F.3d 976, 986 (7th Cir.)
- Lee v. Foster, 750 F.3d 687, 694 (7th Cir.)
- Davila v. Davis, 582 U.S. 521, 528 (2017)

- Murray v. Carrier, 477 U.S. 478, 488 (1986)
- Smith v. McKee, 598 F.3d 374, 382 (7th Cir.)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Coleman v. Thompson, 501 U.S. 722, 752 (1991)
- Hicks v. Hepp, 871 F.3d 513, 531 (7th Cir.)
- House v. Bell, 547 U.S. 518, 536-38 (2006)
- Schlup v. Delo, 513 U.S. 298, 324, 327 (1995)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)
- State v. Durley, Case No. 2019AP1473-CR, 2020 WL 13358042, *1-*3 (Wis. Ct. App. Dec. 15, 2020)

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