

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
NEW YORK**

Andre Vernon v. Steward Eckert

Vernon · No. 26-CV-6299-MAV · Decided April 21, 2026

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK ANDRE VERNON, Petitioner, v. 26-CV-6299-MAV ORDER STEWARD ECKERT, Superintendent, Wende Correctional Facility, Respondent. INTRODUCTION Pro se Petitioner, Andre Vernon, is an inmate at the Wende Correctional Facility. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. ECF No. 1 (original petition); ECF No. 2 (amended petition).

This Court dismissed an earlier petition for lack of standing, as the petition was filed by a next friend who was unable to establish that Vernon could not appear on his own behalf. Case No. 25-CV-6411, ECF No. 4 (W.D.N.Y. Sept. 29, 2025). Vernon paid the filing fee. DISCUSSION Vernon challenges the constitutionality of the judgment of conviction entered January 23, 2009, in the Supreme Court of New York, Erie County, following a jury verdict finding him guilty of second-degree murder, second-degree attempted murder, first-degree assault, and second-degree criminal possession of a weapon.

People v. Vernon, 186 A.D.3d 1276 (4th Dep’t 2016). He is currently serving that sentence. See New York State Department of Corrections and Community Supervision, Incarcerated Lookup, search result for Vernon, Andre, DIN: 09B0376, <https://nysdoccslookup.doccs.ny.gov/> (last accessed Mar. 27, 2026).

Although the petition appears to be untimely, Vernon argues that he is entitled to tolling under 28 U.S.C. § 2244(d)(1)(B) because the Erie County Supreme Court failed to serve an order of March 21, 2016, which responded to a remittal from the Fourth Department Appellate Division. ECF No. 2 at 7.

Because a decision on this issue will benefit from briefing and the records of the state court proceedings, the Court directs the respondent to file and serve a memorandum of law addressing whether the petition is timely. Additionally, before the Court can dismiss the petition as untimely, it must first provide Vernon notice and opportunity to be heard on the statute of limitations issue.

See *Acosta v. Artuz*, 221 F.3d 117, 125 (2d Cir. 2000). This order provides Vernon that opportunity. CONCLUSION IT HEREBY IS ORDERED that Respondent shall file and serve, within 90 days of the date of this Order, a memorandum of law addressing whether the petition is timely under AEDPA’s statute of limitations, including citations to supporting authority and

relevant exhibits; and it is further ORDERED that Respondent must file and serve a copy of any exhibit cited in its memorandum so that such documents are available to Vernon when preparing his reply; and it is further ORDERED that Respondent must provide the Court with a copy of the briefs, the record on appeal, and any opinions of the appellate courts so that such documents can be filed in the official record of this case; and it is further ORDERED that Vernon shall have 30 days after his receipt of Respondent's memorandum to file a written reply; and it is further ORDERED that the Clerk of Court shall electronically serve a copy of the petition, together with a copy of this Order, via a Notice of Electronic Filing to Michael Hillery, Appeals-DAOoffice@erie.gov, of the Office of the District Attorney of Erie County.

VERNON MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR RESPONDENT. SO ORDERED. UNITED STATES DISTRICT JUDGE Dated: April 20, 2026 Rochester, New York