

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
CAROLINA, CHARLESTON DIVISION

**Marquis Spencer McDonald v. Kenneth Sharp, Warden of Turbeville
Correctional Institution**

McDonald v. Sharp, No. 2:24-06196-MGL (D.S.C. Mar. 10, 2026) · No. 2:24-06196-MGL · Decided March 10,
2026

SUMMARY

The United States District Court for the District of South Carolina adopted the magistrate judge’s report and recommendation in a 28 U.S.C. § 2254 habeas action. The court held that Marquis Spencer McDonald’s petition was untimely, that equitable tolling and the actual-innocence gateway did not apply, and that his objections lacked merit. The court granted the respondent’s motion for summary judgment, dismissed the petition with prejudice, denied a certificate of appealability, and denied McDonald’s request for an evidentiary hearing.

CASE DETAILS

COURT	United States District Court for the District of South Carolina, Charleston Division
WRITING FOR THE COURT	Mary Geiger Lewis
JURISDICTION	United States District Court for the District of South Carolina, Charleston Division
DECIDED	March 10, 2026
DOCKET	2:24-06196-MGL
DISPOSITION	dismissed
PROCEDURAL POSTURE	Federal habeas corpus proceeding under 28 U.S.C. § 2254; the district court conducted de novo review of specific objections to a magistrate judge's report and recommendation, granted respondent's motion for summary judgment, dismissed the petition with prejudice, and denied a certificate of appealability.
STANDARD OF REVIEW	The district court conducted de novo review of portions of the report and recommendation to which specific objections were made under 28 U.S.C. § 636(b)(1). It reviewed the summary-judgment motion under the applicable federal standard, although the order does not separately articulate that standard.

PRECEDENTIAL VALUE	unpublished
PARTIES	Marquis Spencer McDonald v. Kenneth Sharp, Warden of Turbeville Correctional Institution

TOPICS

federal habeas corpus statute of limitations actual innocence summary judgment standard of review

PRACTICE AREAS

federal habeas corpus post-conviction relief civil procedure appellate procedure constitutional law

QUESTIONS PRESENTED

1. Whether McDonald's § 2254 petition was untimely under AEDPA's one-year statute of limitations.
2. Whether McDonald established extraordinary circumstances and due diligence sufficient to warrant equitable tolling.
3. Whether an untimely petition could proceed through the Schlup/McQuiggin actual-innocence gateway based on the asserted new scientific and ballistics evidence.
4. Whether McDonald was entitled to an evidentiary hearing on his equitable-tolling and actual-innocence claims.
5. Whether respondent was entitled to summary judgment and dismissal of the petition with prejudice.

HOLDINGS

1. McDonald's federal habeas petition was filed after AEDPA's one-year statute of limitations had expired and was therefore untimely.
2. McDonald was not entitled to equitable tolling because he failed to establish extraordinary circumstances and failed to show that he exercised due diligence in preserving his legal rights before the limitations period expired.
3. McDonald's untimely state post-conviction petition did not toll AEDPA's limitations period because an untimely post-conviction petition is not properly filed for purposes of 28 U.S.C. § 2244(d)(2).
4. McDonald failed to satisfy the Schlup/McQuiggin actual-innocence gateway because he did not show, in light of new reliable evidence, that no reasonable juror would have found him guilty beyond a reasonable doubt.
5. McDonald was not entitled to an evidentiary hearing on his equitable-tolling and actual-innocence claims.

KEY QUOTATIONS

“The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions.” (at 1)

“When a postconviction petition is untimely under state law, that is the end of the matter for purposes of § 2244(d)(2).” (at 3)

“It is therefore the judgment of the Court Sharp’s motion for summary judgment is GRANTED, the petition is DISMISSED WITH PREJUDICE, and any request for a certificate of appealability is DENIED.” (at 4)

FACTUAL BACKGROUND

McDonald filed his federal habeas petition after the one-year limitations period under the Antiterrorism and Effective Death Penalty Act had expired. He argued that equitable tolling should apply because appellate counsel allegedly failed to inform him that his direct appeal had concluded, and he relied on alleged diligence after the deadline rather than evidence of diligence before it expired. He also invoked the actual-innocence gateway based on purported new scientific and ballistics evidence, including evidence concerning bullet trajectory and a codefendant's connection to another crime.

PROCEDURAL HISTORY

McDonald filed a § 2254 petition challenging his state-court judgment. A magistrate judge recommended granting summary judgment for Sharp and dismissing the petition as untimely. McDonald objected, asserting equitable tolling and an actual-innocence gateway based on purported new scientific and ballistics evidence. After de novo review, the district court adopted the report and recommendation to the extent consistent with its order, granted summary judgment, dismissed the petition with prejudice, denied a certificate of appealability, and denied McDonald's request for an evidentiary hearing.

DISPOSITION

dismissed

CASES CITED

- Mathews v. Weber, 423 U.S. 261, 270 (1976)
- Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)
- United States v. Arrowgarp, No. 13-4154, 558 Fed. Appx. 824, 825 (10th Cir. Mar. 18, 2014)
- Keeling v. Warden, Lebanon Correctional Inst., 673 F.3d 452, 463 (6th Cir. 2012)
- LaCava v. Kyler, 398 F.3d 271, 276 (3d Cir. 2005)
- Pace v. DiGuglielmo, 544 U.S. 408, 414 (2005)
- McQuiggin v. Perkins, 569 U.S. 383, 386 (2013)
- Schlup v. Delo, 513 U.S. 298, 316, 324, 327, 329 (1995)

OPINION

MARQUIS SPENCER MCDONALD v. KENNETH SHARP, Warden of Turbeville Correctional Institution

PER CURIAM.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MARQUIS SPENCER MCDONALD, §

Petitioner, § § §

vs. § CIVIL ACTION NO. 2:24-06196-MGL

§ KENNETH SHARP, Warden of Turbeville § Correctional Institution, § Respondent. §

ORDER ADOPTING THE REPORT AND RECOMMENDATION,

GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT,

DISMISSING THE PETITION,

AND DENYING ANY REQUEST FOR A CERTIFICATE OF APPEALABILITY

Petitioner Marquis Spencer McDonald (McDonald) filed this 28 U.S.C. 2254 petition (the petition) against Respondent Kenneth Sharp (Sharp), Warden of Turbeville Correctional Institution. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting to the Court Sharp’s motion for summary judgment be granted, the petition be dismissed with prejudice, and any request for a certificate of appealability be denied. The Report was made in accordance with 28 U.S.C. 636 and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. 636(b)(1). The Magistrate Judge filed the Report on January 23, 2026, McDonald filed his objections on February 6, 2026, and Sharp filed his reply on February 18, 2026. The Court has carefully considered McDonald’s objections, but holds them to be without merit. It will therefore enter judgment accordingly. McDonald presents five objections to the Report. In the first, he contends the Magistrate Judge “erroneously concludes . . . the petition is time-barred and not subject to equitable tolling.” Objections at 1 (emphasis omitted) (capitalization standardized). As to the time-barred argument, McDonald fails to make any arguments his petition is actually timely under the Antiterrorism and Effective Death Penalty Act of 1996, which provides “[a] [one] year period of limitation shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court 28 U.S.C. 2244(d)(1). As detailed in the Report, McDonald neglected to file the petition with this Court until well after the one-year statute of limitations had expired. McDonald appears to agree. Instead, McDonald relies on the doctrine of equitable tolling in his attempt to bring the petition within the one-year limitations period. The Supreme Court, in *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89 (1990), stated, it had “allowed

equitable tolling in situations where the [petitioner] has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the [petitioner] has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.” Id. at 96 (citation omitted) (footnotes omitted). Lacking here is any suggestion McDonald “fil[ed] a defective pleading during the statutory period[] [or . . . he] has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.” Id. Thus, the question here is whether he “exercise[d] due diligence in preserving his legal rights.” Id. Nevertheless, the primary basis for McDonald’s argument for equitable tolling is his “appellate counsel failed to discharge the basic duty of informing . . . McDonald . . . his direct appeal had concluded.” Objections at 2. But, he fails to present, and the Court has been unable to find, any case law to support his contention he is entitled to equitable tolling because of this. In fact, all the case law the Court has found after doing its own independent research points in the opposite direction: McDonald is unable to receive the benefit of equitable tolling based on this alleged mistake by appellate counsel. See *United States v. Arrowgarp*, No. 13–4154, 558 Fed.Appx. 824, 825 (10 Cir. March 18, 2014) (“Particularly egregious attorney misconduct may entitle a petitioner to equitable tolling, but an attorney’s mere alleged failure to inform a client of the date on which his appeal was denied falls well short of that threshold.” (citation omitted) (internal quotation marks omitted)); *Keeling v. Warden, Lebanon Correctional Inst.*, 673 F.3d 452, 463 (6th Cir. 2012) (“[T]his court has declined to equitably toll the statute of limitations where a petitioner alleged . . . the state court and his attorney failed to inform him . . . a decision had been rendered affirming his conviction.” (citation omitted)); *LaCava v. Kyler*, 398 F.3d 271, 276 (3rd Cir. 2005) (“A petitioner is unable to establish extraordinary circumstances “by implying . . . counsel was derelict in failing to timely notify him of the state court’s disposition.”). On the question of McDonald’s diligence, McDonald has failed to show he was diligent in pursuing his legal rights. He neglects to make any argument or present any evidence he ever did anything to check on the status of his appeal. Missing here is any argument or evidence he contacted his appellate counsel, the Court system, or an outside supporter to check on the status of his appeal. Therefore, the Court concludes McDonald “failed to exercise due diligence in preserving his legal rights.” *Irwin*, 498 U.S. at 96 (citation omitted). McDonald, however, points to his alleged diligence after the one-year deadline had lapsed, but fails to argue he was diligent before then. The Court, however, is concerned only with his diligence before the one-year deadline had passed in deciding whether he is entitled to equitable tolling. His diligence after the one-year deadline lacks any import. Consequently, from the Court’s de novo review of the “time-barred” and “equitable tolling” portion of the Report, it holds McDonald has established neither extraordinary circumstances, which kept him from timely filing his PCR petition, nor that he exercised any due diligence whatsoever in preserving his legal rights. To the extent McDonald contends he is somehow entitled to equitable tolling because the PCR court allowed him to go

forward with his untimely PCR petitioner, such argument is foreclosed by binding precedent. The Supreme Court has long held “[w]hen a postconviction petition is untimely under state law, that is the end of the matter for purposes of § 2244(d)(2).” *Pace v. DiGuglielmo*, 544 U.S. 408, 414 (2005) (internal quotation marks and alterations omitted). Section 2244(d)(2) states “[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,” *Id.* As such, because McDonald’s PCR petition was improperly filed, inasmuch as it was untimely, he is unentitled to the tolling provision, allowed by § 2244(d)(2). Consequently, for all these reasons, the Court will overrule McDonald’s first objection. Second, McDonald maintains the Magistrate Judge “erroneously rejects the Schlup/McQuiggin actual-innocence gateway.” Objections at 3 (emphasis omitted) (capitalization standardized). “In doing so,” according to McDonald, “it fails to confront the powerful new scientific and ballistics evidence developed in PCR and misapplies the governing standard.” *Id.* “[A]ctual innocence, if proved, serves as a gateway through which a petitioner may pass [if] the impediment is . . . expiration of the statute of limitations. . . . [T]enable actual-innocence gateway pleas are rare: “[A] petitioner does not meet the threshold requirement unless he persuades the district court. . . , in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.” *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013) (quoting *Schlup*, 513 U.S. at 329). McDonald “argues a claim of actual innocence for cause to excuse the late filing and relies on the possibility . . . a juror may have accepted an expert’s opinion about bullet trajectory, ballistics, and a co-defendant’s connection to another crime.” Sharp’s Reply at 3. “[A] substantial claim . . . constitutional error has caused the conviction of an innocent person is extremely rare.” *Schlup v. Delo*, 513 U.S. 298, 324 (1995). “To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” *Id.* And again, “a petitioner must show . . . it is more likely than not . . . no reasonable juror would have found petitioner guilty beyond a reasonable doubt.” *Id.* at 327. “[T]he *Schlup* standard is demanding. The gateway should open only when a petition presents ‘evidence of innocence so strong . . . a court cannot have confidence in the outcome of the trial unless the court is also satisfied . . . the trial was free of [harmful] constitutional error.’” *Id.* at 401 (quoting *Schlup*, 513 U.S. at 316). The Magistrate Judge’s discussion of these issues is almost eight pages. It is detailed and comprehensive. The Court has made a *de novo* review of a *de novo* determination of those portions of the Report to which specific objections were made on this issue, 28 U.S.C. 636(b)(1), and wholly agrees with the Magistrate Judge’s conclusion McDonald’s claims are without merit. Inasmuch as the Court will incorporate the Report into this Order, it is unnecessary for the Court to repeat the Magistrate Judge’s discussion here. Suffice it to say, the Court in unpersuaded, “in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.” *McQuiggin*, 569 U.S. at 386 (quoting *Schlup*, 513 U.S. at

329). Lacking here is any strong evidence of McDonald's innocence; and the Court is convinced McDonald's "trial was free of [harmful] constitutional error." Id. at 401 (quoting Schlup, 513 U.S. at 316). Accordingly, the Court will overrule McDonald's second objection, too. McDonald makes three other objections to the Report. But, inasmuch as the petition is untimely, it is unnecessary for the Court to detail those merits-based objections here. Even so, in an abundance of caution, the Court has made a de novo review of those portions of the Report to which specific objections were made. 28 U.S.C. 636(b)(1). But, the Court agrees with the Magistrate Judge as to these claims. Consequently, the Court will overrules those objections, too. After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules McDonald's objections, adopts the Report to the extent it is consistent with this Order, and incorporates those portions herein. It is therefore the judgment of the Court Sharp's motion for summary judgment is GRANTED, the petition is DISMISSED WITH PREJUDICE, and any request for a certificate of appealability is DENIED. McDonald requests an evidentiary hearing regarding his equitable tolling and actual innocence claims. But, he has failed to show he is entitled to such a hearing. Thus, the request is DENIED. IT IS SO ORDERED. Signed this 10th day of March, 2026, in Columbia, South Carolina. /s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE