

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Barry Owen Steen v. Jesse Howes

Steen v. Howes · No. 25-3264-JWL · Decided February 2, 2026

SUMMARY

The United States District Court for the District of Kansas dismissed Barry Owen Steen’s 28 U.S.C. § 2254 habeas petition with prejudice as untimely. The court found that Steen had not established grounds for equitable tolling or the actual-innocence exception and denied a certificate of appealability.

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	February 2, 2026
DOCKET	25-3264-JWL
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought federal habeas relief under 28 U.S.C. § 2254. After the court issued an order to show cause regarding the apparent untimeliness of the petition, petitioner responded, and the court dismissed the petition with prejudice as time-barred and denied a certificate of appealability.
STANDARD OF REVIEW	For a habeas petition dismissed on procedural grounds, a certificate of appealability requires a showing that reasonable jurists could debate both whether the petition states a valid constitutional claim and whether the district court's procedural ruling is correct.
PRECEDENTIAL VALUE	Unpublished district court memorandum and order; limited persuasive value.
PARTIES	Barry Owen Steen v. Jesse Howes

TOPICS

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

PRACTICE AREAS

federal habeas corpus

post-conviction relief

statute of limitations

actual innocence

QUESTIONS PRESENTED

1. Whether Steen's § 2254 petition was untimely under the federal habeas statute of limitations.
2. Whether Steen established grounds for equitable tolling of the statute of limitations.
3. Whether Steen could proceed through the actual-innocence exception to the statute of limitations.
4. Whether a certificate of appealability should issue after dismissal on procedural grounds.

HOLDINGS

1. The petition was untimely because the federal habeas statute of limitations expired in August 2025 and Steen filed his petition on December 5, 2025.
2. Equitable tolling was unavailable because Steen did not assert extraordinary circumstances warranting tolling.
3. Steen could not invoke the actual-innocence gateway because he did not assert or demonstrate a colorable claim of actual innocence.
4. No certificate of appealability should issue because the court's procedural ruling was not debatable among jurists of reason.

KEY QUOTATIONS

“Because Petitioner has not asserted the type of extraordinary circumstances under which equitable tolling would be appropriate and has not shown that he should be allowed through the actual innocence gateway, this matter must be dismissed with prejudice as untimely filed.”

FACTUAL BACKGROUND

Steen, a Kansas state prisoner proceeding pro se, filed a federal habeas petition seeking relief that included jail-time credit. The petition was filed after the court determined that the federal habeas statute of limitations had expired in August 2025. In response to the court's order to show cause, Steen did not identify extraordinary circumstances supporting equitable tolling or make a colorable actual-innocence showing.

PROCEDURAL HISTORY

Steen filed a pro se § 2254 petition on December 5, 2025. The court determined that the applicable federal habeas statute of limitations appeared to have expired in August 2025 and issued an order to show cause. Steen responded on January 28, 2026, but did not dispute the untimeliness determination, establish grounds for equitable tolling, or invoke the actual-innocence exception. The court dismissed the matter with prejudice and declined to issue a certificate of appealability.

DISPOSITION

dismissed

CASES CITED

- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005)
- Haney v. Addison, 175 F.3d 1217, 1219-21 (10th Cir. 1999)
- Navarette v. Horton, 2023 WL 1773856, at *1 (10th Cir. 2023)
- Slack v. McDaniel, 529 U.S. 473, 484-85 (2000)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS BARRY OWEN STEEN, Petitioner, v. CASE NO. 25-3264-JWL JESSE HOWES, Respondent. MEMORANDUM AND ORDER This matter is a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed on December 5, 2025 by Petitioner and Kansas state prisoner Barry Owen Steen.

On January 14, 2026, the Court issued a memorandum and order to show cause (“MOSC”) explaining that it appeared that the statute of limitations for filing the petition expired in August 2025, meaning the petition was untimely filed. (Doc. 4, p. 4.)

The MOSC set forth the standards under which equitable tolling of the statute of limitations might be available and the circumstances under which a petitioner might avoid the statute of limitations by making a colorable claim of actual innocence. Id. at 5-7.

The MOSC gave Petitioner time to show cause in writing why this case should not be dismissed as untimely filed. Id. at 8. This matter comes now before the Court on Petitioner’s response to the MOSC, which he timely filed on January 28, 2026. (Doc. 5.)

As explained in the MOSC, the Court liberally construes Petitioner’s pro se filings. (Doc. 4, p. 2-3, p. 2 (citing Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).) But the Court does not assume the role of Petitioner’s advocate and it will not construct arguments for him. (Doc. 4, p. 3 (citing Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir.

2005).) Even liberally construed, Petitioner’s response to the MOSC does not dispute the Court’s conclusion that absent equitable tolling, the federal habeas statute of limitations expired in August 2025, nor does the response assert that Petitioner should be allowed to invoke the actual innocence exception to the statute of limitations. (Doc. 5.) Rather, Petitioner simply asks that the Court not dismiss this untimely matter and instead grant him the jail time credit to which he believes he is entitled.

Id. at 1-2. Because Petitioner has not asserted the type of extraordinary circumstances under which equitable tolling would be appropriate and has not shown that he should be allowed through the actual innocence gateway, this matter must be dismissed with prejudice as untimely filed. See *Haney v. Addison*, 175 F.3d 1217, 1219-21 (10th Cir. 1999) (affirming dismissal with prejudice of untimely 2254 petition); *Navarette v. Horton*, 2023 WL 1773856, *1 (10th Cir.

2023) (unpublished) (same). Certificate of Appealability Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability (COA) upon entering a final adverse order. A COA may issue only if the petitioner made a substantial showing of the denial of a constitutional rights. 28 U.S.C. § 2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The failure to satisfy either prong requires the denial of a COA. Id. at 485. The Court concludes that the procedural ruling in this matter is not subject to debate among jurists of reason. Therefore, the Court declines to issue a certificate of appealability. IT IS THEREFORE ORDERED THAT this matter is dismissed with prejudice as time- barred. No certificate of appealability will issue.

IT IS SO ORDERED. DATED: This 2nd day of February, 2026, at Kansas City, Kansas. S/ John W. Lungstrum JOHN W. LUNGSTRUM United States District Judge