

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

CARLTON ALBERTSON,

Petitioner,

v.

CASE NO. 05-3243-SAC

RAY ROBERTS, et al.,

Respondents.

O R D E R

Petitioner proceeds pro se on a petition for writ of habeas corpus under 28 U.S.C. 2254. By an order dated June 13, 2005, the court directed petitioner to show cause why this action should not be dismissed as time barred under 28 U.S.C. 2244(d).

In response, petitioner essentially argues he was unaware of the one year limitation period imposed by 28 U.S.C. 2244(d), and claims his attorney erroneously stated the indeterminate sentence imposed would be converted to a determinate sentence under the Kansas Sentencing Guidelines Act which became effective after petitioner committed his crime but before petitioner was sentenced. Petitioner also contends the sentence imposed is not fair and equitable under circumstances which included his youth and lesser participation in the charged criminal conduct.

Petitioner clearly identifies no error in the court's finding that the instant petition was filed well outside the statutory limitation period provided in 28 U.S.C. 2244(d). Nor does petitioner demonstrate the diligence or extraordinary circumstances necessary for any equitable tolling of the running

of the limitation period in this case. See Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000) ("[equitable tolling] is only available when an inmate diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control"), *cert. denied*, 531 U.S. 1194 (2001).

Accordingly, for the reasons stated herein and in the order entered on June 13, 2005, the court concludes the petition for a federal writ of habeas corpus under 28 U.S.C. 2254 should be dismissed as time barred.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus is dismissed as time barred.

DATED: This 30th day of June 2005 at Topeka, Kansas.

s/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge