

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ELZIE C. GOODWIN, JR.,

Petitioner,

v.

CASE NO. 08-3055-SAC

DAVID MCKUNE,

Respondent.

O R D E R

Petitioner proceeds pro se and in forma pauperis on a petition for writ of habeas corpus under 28 U.S.C. § 2254. By an order dated February 20, 2008, the court directed petitioner to show cause why the petition should not be dismissed as time barred.

In response, petitioner repeats his claim that the state district and appellate courts erroneously denied him relief on his motion to correct an illegal sentence that improperly treated his prior burglary conviction as a residential burglary. As to his belated filing of the instant petition well after the one year grace period expired in April 1997, petitioner refers to the state district court's 1995 denial of defense counsel's motion to withdraw based upon a breakdown in her communication with petitioner as "rare and exceptional" circumstances. The court finds this fails to make any showing of petitioner's diligence and of extraordinary circumstances beyond petitioner's control, showings necessary to warrant any equitable tolling of the one year limitation period imposed by 28 U.S.C. § 2244(d)(1) on seeking habeas corpus relief in a federal court. See Garcia v. Shanks, 351 F.3d 468, 473 n. 2 (10th

Cir. 2003)(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.")(internal quotations omitted).

Accordingly, for the reasons stated in the order dated February 20, 2008, and herein, the court concludes the petition should be dismissed as time barred.

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

IT IS SO ORDERED.

DATED: This 11th day of March 2008 at Topeka, Kansas.

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