

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CARL D. LEEPER,

Petitioner,

v.

CASE NO. 17-3157-SAC

WARDEN SAM CLINE,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2254. On November 7, 2017, the Court dismissed this matter, finding the matter is time-barred and that petitioner failed to provide adequate grounds for equitable tolling.

Petitioner has filed a Notice of Appeal (Doc. #9) and a motion for certificate of appealability (COA) (Doc. #10).

The Motion for a Certificate of Appealability

Where a district court enters a final order adverse to a habeas corpus petitioner, it must issue or deny a COA. Rule 11, Rules Governing Section 2254 Cases in the United States District Courts. A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right", and, if the COA issues, the Court must identify the specific issue or issues that warrant additional review. 28 U.S.C. § 2253. A petitioner meets that standard by showing that the issues presented are debatable among jurists, that a court could resolve the issues differently, or that the claims deserve additional consideration. *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (citation omitted). Where, as here, the Court's ruling is based upon procedural grounds, the petitioner must show that

"jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* at 484.

The Court has examined the record and concludes that no COA should issue. The petition was denied on a procedural ground, the failure to timely file the petition, and petitioner has not shown that the denial on that basis is reasonably debatable. Likewise, petitioner has failed to present any reliable new evidence that might excuse his failure to timely file.

Fee Status on Appeal

Petitioner submitted the filing fee shortly after he commenced this matter. Because he has not submitted the appellate filing and docketing fee of \$505.00, the Court will direct him to submit either the fee or a motion to proceed in forma pauperis.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for a certificate of appealability (Doc. #10) is denied.

IT IS FURTHER ORDERED petitioner is granted to and including January 5, 2018, to submit either the appellate fees of \$505.00 or a motion to proceed in forma pauperis.

IT IS SO ORDERED.

DATED: This 5th day of December, 2017, at Topeka, Kansas.

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