

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ANTHONY CIOFFI,

Petitioner,

vs.

DAVID BOBBY, WARDEN,

Respondent.

CASE NO. 4:04-CV-1837

OPINION AND MEMORANDUM
[Resolving Doc. No. 19]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Before the Court is Petitioner Anthony Cioffi's motion to amend or alter judgment, or in the alternative for a certificate of appealability. [Doc. 19]. Respondent David Bobby opposes the petitioner's motion. [Doc. 20]. For the reasons discussed in below, the Court DENIES the petitioner's motion.

I. Background

In denying Cioffi's petition for a writ of habeas corpus on March 3, 2005, the Court detailed the factual background of this suit. [Doc. 16]. To recap, in December 1996 the petitioner pled guilty before the Trumbull County Court of Common Pleas to two counts of gross sexual imposition and one count of kidnapping as to his girlfriend's nine-year old daughter, and three counts of rape and three counts of gross sexual imposition as to two of his own biological children. The common pleas court sentenced Cioffi to a total of 10 to 25 years on all the counts.

The petitioner waited until March 2001 to file a motion to withdraw his guilty pleas in the trial court,

Case No. 4:04cv1837
Gwin, J.

arguing that his trial counsel was ineffective and unprepared for trial, and that his own alleged mental deficiencies rendered his guilty pleas less than knowing, voluntary, and intelligent. The trial court conducted an evidentiary hearing in which Cioffi's trial counsel and a psychologist testified. The trial court denied Cioffi's motion and the state appeals court affirmed.

Petitioner Cioffi then sought, and was denied, leave to appeal to the Ohio Supreme Court in June 2003. Finally, Cioffi filed his petition with this Court on September 10, 2004. In his petition, Cioffi argued that he received ineffective assistance of counsel in making his guilty pleas. [Doc. 1]. The respondent filed a motion to dismiss the petition as time-barred. Magistrate Judge George J. Limbert filed a report and recommendation that the Court deny Cioffi's petition. The Court adopted the Magistrate Judge's recommendation and denied the petition.

On March 17, 2005, Cioffi filed the instant motion to amend or alter judgment, or in the alternative for a certificate of appealability.

II. Analysis

The petitioner principally argues that the Court made a clear error of law in analyzing his petition. The petitioner asks that the Court reconsider its earlier analysis and apply the standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6). The petitioner's argument reflects a misunderstanding of the proper standard of review for a habeas corpus petition.

In considering a Rule 12(b)(6) motion to dismiss, "the Court must construe the complaint in the light most favorable to the plaintiffs, accept all factual allegations as true, and determine whether the plaintiffs undoubtedly can prove no set of facts in support of [their] claims that would entitle [them] to relief." *LRL*

Case No. 4:04cv1837
Gwin, J.

Props. v. Portage Metro Hous. Auth., 55 F.3d 1097, 1100-01 (6th Cir. 1995) (citation omitted). Cioffi cites several cases to support the proposition that the Court should have paid the same deference to the allegations in his petition. Unfortunately for Cioffi, none of his cited cases arise in the context of a habeas corpus petition.

The law is clear. On habeas review, a state court's factual determination are entitled to a presumption of correctness. 28 U.S.C. § 2254(e)(1); *House v. Bell*, 386 F.3d 668, 670 (6th Cir. 2004).

In addition:

If the applicant [for habeas relief] has failed to develop the factual basis of a claim in State court proceedings, the [federal] court shall not hold an evidentiary hearing on the claim unless the applicant shows that (A) the claim relies on (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court that was previously unavailable; or (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence

28 U.S.C. § 2254(e)(2).

Petitioner Cioffi again argues that the Court should equitably toll the statute of limitations for filing a habeas petition. The petitioner cites *Souter v. Jones*, 395 F.3d 577 (6th Cir. 2005), in support of his argument. But he never offers an analysis of the Sixth Circuit's equitable tolling factors cited in *Souter* and adopted in *Andrews v. Orr*, 851 F.2d 146, 150 (6th Cir. 1988). The relevant factors are: (1) the petitioner's lack of notice of the filing requirement; (2) the petitioner's lack of constructive knowledge of the filing requirement; (3) the petitioner's diligence in pursuing his rights; (4) prejudice to the respondent; and (5) the petitioner's reasonableness in remaining ignorant of the filing requirement. *Souter*, 395 F.3d at 588.

Case No. 4:04cv1837
Gwin, J.

Instead, Cioffi offers the same three points in support of his argument, asserting that he (1) is mentally challenged, (2) can barely read, and (3) did not understand the waivers of his constitutional rights when he pled guilty. [Doc. 19 at 11-12]. The Ohio appeals court evaluated Cioffi's competence in affirming the denial of his motion to withdraw his guilty pleas. The appeals court found that Cioffi (1) insisted on making the plea agreement despite his counsel's advice to wait, (2) possessed at least average basic intelligence, (3) had previous experience in criminal proceedings, and (4) confirmed several times at sentencing that he was satisfied with his trial counsel's performance. [Doc. 16]; *Ohio v. Cioffi*, Nos. 2002-T-0037 and 2002-T-0039, 2003 Ohio App. LEXIS 2199, at *1-4 (Ohio Ct. App. May 9, 2003).

As the Court noted in its earlier opinion, "the doctrine of equitable tolling should be used sparingly," and is generally used "only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Vroman v. Brigano*, 346 F.3d 598, 604 (6th Cir. 2003) (citations and internal quotation marks omitted). Cioffi offers no reason for this Court to reexamine his mental competence in the equitable tolling context, especially when he received hearings and presented evidence on just that issue in the Ohio courts.

III. Conclusion

For the reasons detailed above, the Court DENIES Petitioner Cioffi's motion to amend or alter judgment or in the alternative for a certification of appealability. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there

Case No. 4:04cv1837
Gwin, J.

There is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P.
22(b).

IT IS SO ORDERED.

Dated: April 7, 2005

s/ James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE