

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATRICK L. BROWN,)
)
 Petitioner,)
)
 v.) Civil Action No. 02-1542-SLR
)
 THOMAS L. CARROLL,)
 Warden, and ATTORNEY)
 GENERAL OF THE STATE)
 OF DELAWARE,)
)
 Respondents.)

Patrick L. Brown, pro se petitioner.

Thomas E. Brown, Deputy Attorney General, Delaware Department of
Justice, Wilmington, Delaware. Counsel for respondents.

MEMORANDUM OPINION

January 28, 2004
Wilmington, Delaware

Robinson, Chief Judge

I. INTRODUCTION

Petitioner Patrick L. Brown is a Delaware inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the court is petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 1,5,13) For the reasons that follow, the court concludes that petitioner's application is time-barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1). Accordingly, the court will dismiss the petition as untimely.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 1997, petitioner was convicted by a Delaware Superior Court jury of attempted first degree robbery, first degree burglary, second degree assault, four counts of possession of a firearm during the commission of a felony, four counts of second degree conspiracy, and disorderly conduct. Brown was sentenced to a total of 26 years and 30 days at Level V, with portions suspended for lower levels of supervision. See Brown v. State, 729 A.2d 259 (Del. 1999).

Petitioner appealed his conviction, alleging: (1) the Superior Court erred in failing to dismiss the conspiracy counts because the indictment did not allege an overt act; (2) the Superior Court denied him his Sixth Amendment right to present defense witnesses when it permitted those witnesses to invoke

their Fifth Amendment right against self-incrimination; and (3) the Superior Court erred by failing to give the jury a specific unanimity instruction. Id. at 261. On April 6, 1999, the Delaware Supreme Court affirmed petitioner's conviction and sentence, concluding that no reversible error occurred during petitioner's trial. Id.

On October 25, 2001, petitioner filed a motion for state post-conviction relief in the Delaware Superior Court, asserting twenty-four grounds for relief. See Brown v. State, 797 A.2d 1206 (Del. 2002). On January 28, 2002, the Superior Court denied the motion, finding petitioner's substantive contentions to be without merit. (D.I. 11, Ex. D in Appellee's Motion to Affirm in Brown v. State, No. 81, 2002) This decision was affirmed on appeal. Brown v. State, 797 A.2d 1206 (Del. 2002).

Petitioner, acting pro se, filed the pending application for federal habeas relief on October 15, 2002. (D.I 1) On December 26, 2002, petitioner filed a motion to amend his habeas application to expand on his claim regarding illegally intertwined indictments. (D.I. 5) This court interpreted the amendment as the first amended habeas petition. (Id.) Thereafter, on March 17, 2003, petitioner moved to amend his claim regarding the improper jury instruction. (D.I.13) The court granted petitioner's motion to amend. (D.I. 18)

Viewing the original habeas petition and the two amendments

as one petition, petitioner alleges: (1) his arrest was illegal because it was based on meritless accusations and the arrest warrant did not have a court seal; (2) the Superior Court lacked jurisdiction because the arrest warrant was invalid and the indictment was defective; (3) defense counsel was ineffective for: failing to utilize discovery materials, failing to make objections at trial, failing to file pretrial motions, failing to object to petitioner's arrest, failing to object to an invalid arrest warrant, failing to object to the committing magistrate's lack of neutrality, failing to object to prosecutorial misconduct, failing to object to misjoined indictments, failing to object to an insufficient indictment, failing to object to the trial court's lack of jurisdiction, failing to object to the trial court's erroneous and improper jury instruction, and failing to object to his illegal sentence; (4) the committing magistrate judge violated his due process rights by failing to remain detached and neutral; (5) the preliminary hearing was illegal because it was based on meritless accusations; (6) prosecutorial misconduct for permitting "incompetent commissioner to conduct illegal preliminary hearing for meritless accusations"; (7) prosecutorial misconduct by presenting an illegal indictment to the Superior Court and also by falsely alleging that petitioner was indicted by the Grand Jury; (8) the indictment was defective because it illegally intertwined two

indictments; (9) the indictment was insufficient because it failed to allege the essential elements of robbery or attempted robbery; (10) improper and erroneous jury instructions; (11) illegal sentence; and (12) insufficient indictment for counts 5, 10, 13, and 17.¹ (D.I. 1, 5, 13)

Respondents contend that the entire petition is time-barred and ask the court to dismiss the petition as untimely. (D.I. 9)

Petitioner filed a "Motion to Strike Respondents' Answer," which the court treated as a travers. (D.I. 18)

Petitioner's habeas petition is now ripe for review.

III. DISCUSSION

A. One-Year Statute of Limitation

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") prescribes a one-year period of limitation for the filing of habeas petitions by state prisoners. 28 U.S.C. § 2244(d)(1). The one-year limitation period begins to run from the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

¹To promote efficiency, the court combined certain repetitive claims and renumbered claims. However, the substance of petitioner's claims was not altered.

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1).

Petitioner does not allege, nor can the court discern, any facts triggering the application of § 2244(d)(1)(B), (C), or (D). As such, the one-year period of limitation began to run when petitioner's conviction became final under § 2244(d)(1)(A).

If a state prisoner appeals a state court judgment but does not seek certiorari review, the judgment of conviction becomes final, and the one-year period begins to run, upon expiration of the ninety-day time period allowed for seeking certiorari review.

See Kapral v. United States, 166 F.3d 565, 575, 578 (3d Cir.

1999); Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999).

In the present case, the Delaware Supreme Court affirmed petitioner's conviction and sentence on April 6, 1999. Brown v. State, 729 A.2d 259 (Del. 1999). Because petitioner did not file for a writ of certiorari, his conviction became final on July 6, 1999. Accordingly, petitioner had to file his § 2254 petition by July 6, 2000 in order to be timely.

As noted by respondents, the model § 2254 form indicates September 19, 2002, whereas the certificate of service for the first attachment and the cover page for the second attachment

indicate September 9, 2002. (D.I. 9) A pro se prisoner's habeas petition is deemed filed on the date he delivers it to prison officials for mailing to the district court. See Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998); Woods v. Kearney, 215 F.Supp. 2d 458, 460 (D. Del. 2002). As such, the court adopts the earliest date indicated on the habeas petition, September 9, 2002, as the date of filing.²

Unfortunately, even using September 9, 2002 as the filing date renders petitioner's filing of his habeas petition more than two years too late. Thus, the court concludes that petitioner's habeas petition is time-barred and should be dismissed, unless the time period can be statutorily or equitably tolled. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999). The court will discuss each doctrine in turn.

B. Statutory Tolling

Section 2244(d)(2) of the AEDPA specifically permits the statutory tolling of the one-year period of limitations:

The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending should not be

²In his "Motion to Strike State's Answer," petitioner contends that the different dates "had no bear[ing] on the filing of the [habeas] application" and thus, the petition should not be dismissed on this ground. The petition is not being dismissed because of the different dates, or because the court interprets any of the amendments or attachments as successive. Rather, the petition is being dismissed because any of the dates included on petitioner's submissions to this court render his petition untimely.

counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(2). The Third Circuit views a properly filed application for State post-conviction review as "one submitted according to the state's procedural requirements, such as the rules governing the time and place of filing." Lovasz v. Vaughn, 134 F.3d 146, 148 (3d Cir. 1998). However, even if a state post-conviction motion is properly filed under state procedural rules, it will not toll or revive the federal habeas limitations period if the § 2254 petition itself is not filed within the federal one-year filing period. See Price v. Taylor, 2002 WL 31107363, at *2 (D. Del. Sept. 23, 2002).

Here, when petitioner filed his motion for **state** post-conviction relief on October 25, 2001, the **federal** habeas filing period had already expired on July 6, 2000. As such, petitioner's state post-conviction motion does not toll the filing period for his federal habeas petition. Id.

C. Equitable Tolling

A petitioner may also avoid the AEDPA one-year time period by demonstrating that the doctrine of equitable tolling applies to the habeas petition. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 122 S.Ct. 323 (2001); Miller v. New Jersey State Dep't of Corrs., 145 F.3d 616 (3d Cir. 1998). Equitable tolling is proper when "the petitioner has in some extraordinary

way . . . been prevented from asserting his or her rights." Id. at 618 (internal citations omitted). The Third Circuit permits equitable tolling for habeas petitions in only four narrow circumstances:

- (1) where the defendant actively misled the plaintiff;
- (2) where the plaintiff was in some extraordinary way prevented from asserting his rights;
- (3) where the plaintiff timely asserted his rights mistakenly in the wrong forum; or
- (4) where [in a Title VII action] the claimant received inadequate notice of his right to file suit, a motion for appointment of counsel is pending, or the court misled the plaintiff into believing that he had done everything required of him.

Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999).

Federal courts invoke the doctrine of equitable tolling "only sparingly." See United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998). In order to trigger equitable tolling, the petitioner must demonstrate that he "exercised reasonable diligence in investigating and bringing [the] claims"; mere excusable neglect is insufficient. Miller, 145 F.3d at 618-19 (citations omitted). For example, in non-capital cases, inadequate research, attorney error, miscalculation, or other mistakes do not qualify as "extraordinary circumstances" sufficient to trigger equitable tolling. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001). Generally, "a statute of limitations should be tolled only in the rare situation where equitable tolling is demanded by sound legal principles as well as the interests of justice." Jones, 195 F.3d at 159 (quoting Midgley,

142 F.3d at 179).

In the instant case, petitioner has failed to articulate any extraordinary circumstances that prevented him from filing his petition with this court in a timely manner. Even though he filed a "Motion to Strike State's Motion to Dismiss," this response does not address respondents' clear assertion that the doctrine of equitable tolling does not apply. (D.I. 14) To the extent petitioner mistakenly believed that a state post-conviction motion timely filed in state court could toll the one-year period under § 2244(d)(2), his misinterpretation of the federal habeas statute does not warrant equitably tolling the one-year period. See Simpson v. Snyder, 2002 WL 1000094, at *3 (D. Del. May 14, 2002) (a pro se petitioner's lack of legal knowledge does not constitute an extraordinary circumstance to trigger equitable tolling).

Moreover, the court has independently reviewed the record and can discern no extraordinary circumstances that warrant equitable tolling. Accordingly, the court concludes that the doctrine of equitable tolling is not available to petitioner on the facts he has presented and, therefore, petitioner's § 2254 petition will be dismissed as untimely.

IV. CERTIFICATE OF APPEALABILITY

Finally, the court must decide whether to issue a certificate of appealability. See Third Circuit Local Appellate

Rule 22.2. A certificate of appealability may only be issued when a petitioner makes a “substantial showing of the denial of a constitutional right” by demonstrating “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

When a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the court is not required to issue a certificate of appealability unless the petitioner demonstrates that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Id. “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” Id.

The court concludes that petitioner’s habeas petition must be dismissed as untimely. Reasonable jurists would not find this conclusion to be unreasonable. Consequently, the court declines to issue a certificate of appealability.

V. CONCLUSION

For the reasons stated, petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254 is denied. An appropriate order shall issue.

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 Warden, and ATTORNEY)
 GENERAL OF THE STATE)
 OF DELAWARE,)
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 Respondents.)

ORDER

At Wilmington, this 28th day of January, 2004,
consistent with the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Patrick L. Brown's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (D.I. 1,5,13) is DISMISSED, and the relief requested therein is DENIED.

2. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

Sue L. Robinson
UNITED STATES DISTRICT JUDGE