

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LAWRENCE COLLINGWOOD, JR.,)
)
 Petitioner,)
)
 v.) Civil Action No. 00-783-SLR
)
ROBERT SNYDER, Warden, and)
ATTORNEY GENERAL OF THE)
STATE OF DELAWARE,)
)
 Respondents.)

Lawrence Collingwood, Jr., Delaware Correctional Center, Smyrna, Delaware. Petitioner, pro se.

Loren C. Meyers, Esquire, Chief of Appeals Division, Delaware Department of Justice, Wilmington, Delaware. Counsel for Respondents.

MEMORANDUM OPINION

Dated: June 28, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Petitioner Lawrence Collingwood, Jr., is a Delaware inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the court is petitioner's amended application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 2, 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. BACKGROUND

On September 9, 1987, a Delaware grand jury charged petitioner with two counts of first degree murder, first degree robbery, conspiracy, and three counts of possession of a deadly weapon during the commission of a felony. The charges stemmed from the February 3, 1986 robbery of the Super Soda Center in Camden, Delaware, during which the clerk, Joseph Starrette, was shot and killed.

Following several continuances, jury selection commenced in the Superior Court on March 13, 1989. After the jury was selected, defense counsel requested a continuance in order to prepare a defense of insanity, which the Superior Court granted. Four weeks later, following supplemental voir dire respecting the insanity defense, the trial commenced. On May 1, 1989, the jury

found petitioner guilty of one count of first degree murder, first degree robbery, conspiracy, and two counts of possession of a deadly weapon during the commission of a felony. The Superior Court sentenced petitioner on June 29, 1990, to life in prison plus twelve years. The Delaware Supreme Court affirmed. Collingwood v. State, 594 A.2d 502 (Del. 1991).

More than eight years later, on November 22, 1999, petitioner filed a letter asking the Superior Court to vacate his conviction and sentence. The Superior Court treated petitioner's letter as a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court summarily dismissed the motion on November 24, 1999, because the claims presented therein were procedurally barred. Petitioner filed three more Rule 61 motions on January 14, 2000, March 31, 2000, and May 8, 2000. The Superior Court summarily dismissed each. The Delaware Supreme Court affirmed the orders dismissing petitioner's third and fourth Rule 61 motions¹ because they were untimely and the claims presented therein were procedurally barred. Collingwood v. State, No. 280, 2000, 2000 WL 1177630 (Del. Aug. 11, 2000).

Petitioner filed the current application for federal habeas relief on August 11, 2000, which he amended on November 10,

¹ Petitioner did not appeal from the orders dismissing his first and second Rule 61 motions.

2000.² (D.I. 2, 13) In his amended application, petitioner alleges insufficiency of the evidence, prosecutorial misconduct, ineffective assistance of counsel, and that his insanity defense was involuntary and unlawfully induced. (D.I. 13) Respondents assert that the petition is subject to a one-year period of limitation that expired before petitioner filed it, and ask the court to dismiss it as time barred.

III. DISCUSSION

A. One-Year Period of Limitation

In the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Congress amended the federal habeas statute by prescribing a one-year period of limitation for the filing of habeas petitions by state prisoners. Stokes v. District Attorney of County of Philadelphia, 247 F.3d 539, 541 (3d Cir.), cert. denied, 122 S. Ct. 364 (2001). Effective April 24, 1996, the AEDPA provides in relevant part:

- (1) A 1-year period of limitation shall apply to an

² The court originally appointed counsel to represent petitioner in this matter. (D.I. 32) At counsel's request, the court authorized expenditure of \$4,200 in CJA funds for a trial transcript. (D.I. 103) Following petitioner's numerous complaints respecting counsel's representation, counsel moved to withdraw. (D.I. 124) In his motion to withdraw, counsel represents that the petition is time barred, procedurally barred, and without merit. (Id.) After the court granted counsel's motion to withdraw, petitioner filed a motion requesting appointment of subsequent counsel. (D.I. 129) Because the court will dismiss the petition as time barred, as discussed herein, petitioner's motion for appointment of subsequent counsel will be denied as moot.

application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall 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 . . .

28 U.S.C. § 2244(d). In order to avoid any impermissible retroactive application of the one-year period of limitation, state prisoners whose convictions became final prior to the enactment of the AEDPA were allowed to file their habeas petitions no later than April 23, 1997. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998) (prohibiting dismissal of petitions filed on or before April 23, 1997, as untimely).

For purposes of § 2244(d)(1)(A), petitioner's conviction became final prior to the enactment of the AEDPA. As described above, the Delaware Supreme Court affirmed petitioner's conviction and sentence on April 9, 1991. Petitioner was then allowed ninety days in which to file a petition for a writ of certiorari with the United States Supreme Court. See Sup. Ct. R. 13.1. Although petitioner did not seek review from the United States Supreme Court, the ninety-day period in which he could have filed such a petition is encompassed within the meaning of "the expiration of the time for seeking [direct] review," as provided in § 2244(d)(1)(A). See Kapral v. United States, 166 F.3d 565, 576 (3d Cir. 1999) (holding that on direct review, the

limitation period begins to run at the expiration of the time for seeking review in the United States Supreme Court). Therefore, petitioner's conviction became final on July 8, 1991, ninety days after the Delaware Supreme Court affirmed his sentence, and well before the enactment of the AEDPA on April 24, 1996. Thus, he could have filed a timely federal habeas petition not later than April 23, 1997. See Burns, 134 F.3d at 111.

The court's docket reflects that the current petition was filed on August 24, 2000. (D.I. 2) A pro se prisoner's habeas petition, however, is deemed filed on the date he delivers it to prison officials for mailing to the district court, not on the date the district court docket it. Id. at 113. Here, petitioner has provided no documentation establishing the date he delivered his habeas petition to prison officials for mailing. The petition itself is dated August 11, 2000. (D.I. 2) In the absence of documentation respecting the date of delivery, the court deems the petition filed on August 11, 2000.

Nonetheless, petitioner's federal habeas petition was filed well beyond the April 23, 1997 deadline. That, however, does not end the timeliness inquiry, because the one-year period may be statutorily or equitably tolled. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999).

B. Statutory Tolling

The AEDPA provides for statutory tolling of the one-year

period of limitation as follows:

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 shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(2).

Here, petitioner filed his first motion for postconviction relief in the Superior Court on November 22, 1999. The one-year period, however, expired on April 23, 1997, two and one-half years earlier. Petitioner's motions for postconviction relief, each filed after the one-year period expired, have no tolling effect in this matter. See Fisher v. Gibson, 262 F.3d 1135, 1142-43 (10th Cir. 2001) (stating that application for postconviction relief filed after the expiration of the one-year period has no tolling effect), cert. denied, 122 S. Ct. 1789 (2002); Trotman v. Snyder, Civ. A. No. 01-653-JJF, 2002 WL 1348180, *2 (D. Del. June 17, 2002) (same).

In sum, petitioner did not file any applications for state postconviction relief until after the one-year period of limitation had expired. For this reason, the court concludes that the statutory tolling provision does not apply.

C. Equitable Tolling

Additionally, the one-year period of limitation may be equitably tolled. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 122 S. Ct. 323 (2001); Jones, 195 F.3d at 159;

Miller v. New Jersey State Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998). The doctrine of equitable tolling applies:

only when the principles of equity would make the rigid application of a limitation period unfair. Generally, this will occur when the petitioner has in some extraordinary way been prevented from asserting his or her rights. The petitioner must show that he or she exercised reasonable diligence in investigating and bringing [the] claims. Mere excusable neglect is not sufficient.

Miller, 145 F.3d at 618-19 (citations omitted). In other words, equitable tolling "may be appropriate if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights, or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." Jones, 195 F.3d at 159 (quoting United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998)).

In the instant case, the court has searched the entire record in an effort to discern why petitioner waited until November 22, 1999, to pursue any postconviction remedies. In a document attached to his amended petition, petitioner offers the following: "The reason I've waited so long to file my habeas I was transferred out of state my legal stuff stolen and just recently recovered what documents I have for this Court." (D.I. 13, Attachment at 7)

First, the fact that petitioner was temporarily housed in

Virginia³ does not warrant equitable tolling. As the United States Supreme Court has noted, pro se prisoners have no choice but to litigate their claims by mail. See Houston v. Lack, 487 U.S. 266, 271 (1988). As a pro se prisoner, petitioner could have filed a postconviction motion or habeas petition by mailing it from a facility in Virginia, just as he easily as he could have mailed it from a facility in Delaware.

Respecting petitioner's assertion that his "legal stuff" was stolen, the court can conceive of circumstances in which the denial of access to certain legal documents might warrant equitable tolling. Here, however, petitioner has failed to articulate any such circumstances. He does not specify which documents were stolen, nor does he identify any particular claims he could not present without those unspecified documents. See Gassler v. Bruton, 255 F.3d 492, 495 (8th Cir. 2001) (refusing to apply equitable tolling where petitioner failed to identify any particular claims he was prevented from raising due to the lack of a complete transcript). In other words, he has failed to explain why the missing documents were necessary to prepare either a motion for postconviction relief or a federal habeas petition. See United States v. Van Poyck, 980 F. Supp. 1108,

³ It is unclear from the record exactly when petitioner was transferred to Virginia and back to Delaware. In certain documents, petitioner represents that he was transferred to Virginia in 1998 (D.I. 77, 90), while in other documents he states that he was transferred in 1997 (D.I. 113).

1111 (C.D. Cal. 1997) (refusing to find extraordinary circumstances where petitioner failed to explain why transcripts were necessary to prepare motion). In short, the court cannot conclude that the lack of any particular documents prevented petitioner from pursuing state or federal postconviction relief in a timely fashion.

A review of the record also raises concerns respecting petitioner's mental competence to pursue postconviction remedies in a timely manner.⁴ The Third Circuit has recognized that a petitioner's mental incompetence may warrant equitable tolling if his incompetence "somehow affected the petitioner's ability to file a timely habeas petition." Nara v. Frank, 264 F.3d 310, 320 (3d Cir. 2001). Mental incompetence, however, "is not a per se reason to toll a statute of limitations." Id.

As described above, petitioner should have filed a federal habeas petition or a motion for postconviction relief (for purposes of statutory tolling) no later than April 23, 1997. The relevant inquiry, then, is whether the record contains evidence from which the court could conclude that mental incompetence prevented petitioner from pursuing postconviction remedies between July 8, 1991, (the date his conviction became final) and April 23, 1997 (the date that the one-year period of limitation

⁴ The court does not suggest that petitioner is, or ever was, mentally incompetent. The court inquires only because the record indicates that mental incompetence was raised at trial.

expired).

As described previously, petitioner presented an insanity defense at trial, a defense which proved unsuccessful.⁵ A psychiatrist who examined petitioner testified at trial that he exhibited symptoms reminiscent of temporal lobe epilepsy. Petitioner also mentions being sent to the "State Hospital" as a juvenile and while he was on trial in 1989. (D.I. 94, 95) He makes no mention of any further mental treatment following his conviction. After carefully reviewing the record, the court is unable to find any evidence suggesting that mental incompetence prevented petitioner from pursuing postconviction remedies between July 8, 1991, and April 23, 1997.

In sum, the court concludes that no extraordinary circumstances prevented petitioner from filing his petition in a timely manner. Accordingly, the doctrine of equitable tolling does not apply, and the petition will be dismissed as untimely.

D. Evidentiary Hearing

The AEDPA grants district courts the discretion to conduct evidentiary hearings on habeas review, but only in limited circumstances. See 28 U.S.C. § 2254(e); Campbell v. Vaughn, 209 F.3d 280, 286-87 (3d Cir. 2000), cert. denied, 531 U.S. 1084

⁵ The court notes that petitioner repeatedly asserts that he did not consent to the presentation of an insanity defense, and that defense counsel proceeded with such a defense against his will. He also repeatedly denies any mental illness or incompetence.

(2001). The court **may**, for example, conduct an evidentiary hearing if the petitioner "has diligently sought to develop the factual basis of a claim for habeas relief, but has been denied the opportunity to do so by the state court." Campbell, 208 F.3d at 287 (quoting Cardwell v. Greene, 152 F.3d 331, 337 (4th Cir. 1998)). In exercising its discretion, the court should focus "on whether a new evidentiary hearing would be meaningful, in that a new hearing would have the potential to advance the petitioner's claim." Id. at 287. The court properly refuses a request to conduct an evidentiary hearing where the petitioner fails "'to forecast any evidence beyond that already contained in the record' that would help his cause, 'or otherwise to explain how his claim would be advanced by an evidentiary hearing.'" Campbell, 208 F.3d at 287 (quoting Cardwell, 152 F.3d at 338).

In the matter at hand, petitioner repeatedly requests to be brought to court for a hearing. His most recent request is in response to the court's order granting counsel's motion to withdraw. (D.I. 129) For the reasons discussed previously, the court is persuaded that the petition is time barred. Despite his repeated requests for a hearing, petitioner has failed completely to identify any evidence that might be adduced at a hearing that could alter the court's decision. Accordingly, the court will deny petitioner's request for an evidentiary hearing.

IV. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. See Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal court dismisses a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must demonstrate 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. Slack v. McDaniel, 529 U.S. 473, 484 (2000). "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.

As explained above, the court has concluded that petitioner's application is time barred, and that neither the statutory tolling provision nor the doctrine of equitable tolling renders the petition timely. The court is persuaded that reasonable jurists would not debate the correctness of these conclusions. Petitioner, therefore, has failed to make a

substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted.

V. CONCLUSION

For the reasons stated, the court will dismiss petitioner's application for a writ of habeas corpus, and will not issue a certificate of appealability. The court will also deny petitioner's motion for an evidentiary hearing and for appointment of subsequent counsel. An appropriate order shall issue.

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O R D E R

At Wilmington, this 28th day of June, 2002, consistent with
the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Lawrence Collingwood, Jr.'s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed, and the relief requested therein is denied.

2. Petitioner's motion for a hearing and for appointment of counsel (D.I. 129) is denied.

3. 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