

1993. The first witness to testify at the hearing was Dr. Kutas Tavlan-Dogan, the former Director of Forensic Psychiatry at the Delaware State Hospital and then in private practice. Based on an examination of petitioner as well as a review of the audio and video tapes of his interview with the arresting officer on April 24, 1992, Dr. Dogan opined that petitioner was mildly mentally retarded but that there was no evidence of mental illness. See State v. Rodgers, 1994 WL 164573, at *2 (Del. Super. Ct. Apr. 14, 1994). She diagnosed petitioner as having "Personality Disorder NOS with Passive/Aggressive and Anti-Social Traits." Id. In addition, she testified that she believed there "was an 'element of malingering' present in [petitioner's] conduct." Id. It was Dr. Dogan's opinion that petitioner was competent to have entered his guilty plea on January 20, 1993. See id. at *3.

The next witness to testify, Dr. Irwin G. Weintraub, a board-certified clinical psychologist, disagreed with Dr. Dogan's conclusions. He opined that petitioner was not competent to stand trial or to have entered a guilty plea. See id. In fact, Dr. Weintraub testified that petitioner was moderately mentally retarded and had been "insane" at the time of the alleged robberies. Id. Dr. Weintraub diagnosed petitioner as suffering from schizophrenia, undifferentiated

type. See id. His evaluation was based upon an examination of petitioner; Dr. Weintraub did not review the April 24, 1992 audio and video tapes. See id.

During the competency hearing, the Superior Court "closely observed" petitioner. Id. at *4. According to the court, petitioner's

courtroom behavior was strange: no communication appeared to be ongoing between [petitioner] and his counsel . . .; [petitioner's] appearance was tousled and unkempt; he periodically made unusual gestures, slumped forward frequently and from all outward appearances appeared not to be appreciating or comprehending the proceedings. He occasionally uttered incomprehensible statements.

Id. Given petitioner's behavior and the two diametrically opposed opinions of his competency, the Superior Court proposed, and counsel agreed to, petitioner's evaluation by a third expert, Dr. Antonio Sacre, Director of Forensic Psychiatry at the Delaware State Hospital. See id. at *4.

In his written report, Dr. Sacre diagnosed petitioner as being "mildly" mentally retarded and having "Personality Disorder with Anti-Social Traits." Id. He found some degree of malingering but no signs of psychosis. See id. According to his written report, it was Dr. Sacre's opinion that petitioner had an "understanding of the legal process and how to handle his case.'" Id. At the continued competency

hearing on February 2, 1994, however, Dr. Sacre testified that petitioner was "'not competent' to stand trial or otherwise to assist his counsel." Id. The Superior Court attributed Dr. Sacre's change in position to his "observation of [petitioner's] continuing strange courtroom behavior." Id. According to the Superior Court, petitioner's conduct was similar to that observed on August 17, 1993, except that at the continued hearing he "seemed also to be occasionally placing pieces of paper in his hair." Id.

On April 14, 1994, the Superior Court denied petitioner's motion to withdraw his guilty plea, finding that petitioner, "although somewhat mentally retarded and of limited intellectual ability," was competent at the time of the taking of the guilty plea. Id. at *9. The court's finding stemmed in part from the disparate behavior petitioner had exhibited since his arrest in April 1992. According to the court,

[i]f [petitioner] had exhibited the type of strange behavior that he exhibited in court on August 17, 1993 and on February 2, 1994 (and which he also exhibited to some degree to the three interviewing psychiatrists) on April 24, 1992, at the time of his arrest, on January 20, 1993 when he entered the guilty plea[,] or in February 1993 at the time of the presentence interview, his competency would be much more in question. However, his demeanor as recorded on video and audio tape and as indicated during the guilty plea and during the presentence

interview^[1] sheds important light on this issue since his conduct at those later times was at such great variance with his courtroom conduct (as well as at such variance with his conduct in interviews with Drs. Dogan, Weintraub and Sacre).

Id. at *8. The court, agreeing with Dr. Dogan's assessment, determined there was an "'element of malingering' present" in petitioner's conduct. Id. at *9. The court opined that such malingering could be explained by petitioner's stated preference to be housed at the Delaware State Hospital rather than at a Department of Correction facility and his wish not to testify against his co-defendant. See id. at *8. The Superior Court concluded that petitioner's case should proceed to sentencing. See id. at *9.

On August 19, 1994, petitioner was sentenced to a total of twenty-four (24) years imprisonment. He did not file a direct appeal.

On October 13, 1994, petitioner filed a motion for state post-conviction relief pursuant to Super. Ct. Cr. R. 61. In

¹According to the Superior Court, there was "no indication whatsoever of any unusual or bizarre behavior" at the time of petitioner's guilty plea or his arrest. Rodgers, 1994 WL at *6. In fact, the court described petitioner's demeanor during the video statement as that "of a calm, composed, often monosyllabic individual who nevertheless responded essentially coherently and responsively to the police officer's questions." Id. The court further found that the audio tape revealed petitioner to be "oftentimes quite articulate and responsive." Id.

his motion, petitioner alleged ineffective assistance of counsel and procedural defects in the taking of his guilty plea. The Superior Court denied the motion on January 30, 1995. See State v. Rogers, Cr. A. No. IN92-05-0590, Alford, J. (January 30, 1995) (ORDER). No appeal was taken.

On August 19, 1997, petitioner filed a second motion for post-conviction relief with the Delaware Superior Court, requesting a new evidentiary hearing on the issue of his competency to have entered the January 20, 1993 guilty plea. In his motion, petitioner alleged that on September 27, 1995 he was extradited to Pennsylvania to stand trial on various criminal charges. (D.I. 10, Appellant's Opening Brief) There, according to petitioner, in March 1996 he was examined by a psychiatrist who determined he was legally incompetent to stand trial on the Pennsylvania charges.² (D.I. 10, Appellant's Opening Brief) An order of nolle prosequi was entered as to the Pennsylvania charges on May 3, 1996. (D.I. 10, Appellant's Appendix) The Superior Court denied petitioner's motion on April 27, 1998 on the ground that the

²The evidence submitted by petitioner in support of this assertion consisted of an application for a competency examination, an order by the Court of Common Pleas of Delaware County directing that he undergo a psychiatric evaluation by the Delaware County Psychiatric Consultant, and a nolle prosequi order dismissing the Pennsylvania charges. (D.I. 10, Appellant's Opening Brief and Appellant's Appendix)

issue of his competency at the time he entered his guilty plea had been previously adjudicated and thus the motion was procedurally barred pursuant to Super. Ct. Cr. R. 61(i)(4). (D.I. 10, Appellant's Opening Brief) Petitioner appealed, and the Delaware Supreme Court affirmed the Superior Court's decision on December 9, 1998. See Rogers v. State, No. 223, 1998, 723 A.2d 398, 1998 WL 986013 (Del. Dec. 9, 1998).

Petitioner's instant application for a writ of habeas corpus is dated November 4, 1999. (D.I. 2) The Clerk of the District Court received the petition on December 13, 1999 and docketed petitioner's habeas application as filed on January 5, 2000. (D.I. 2) In his application for federal habeas relief, petitioner challenges his conviction on the ground that the state court's denial of a "retrospective competency hearing constituted abuse of discretion" in light of the "evidence raising [a] bona fide doubt as to his competency."³ (D.I. 2) Respondent filed an answer, asserting that petitioner's application is untimely under 28 U.S.C. § 2244(d)(1)(A) and, therefore, must be dismissed.⁴ (D.I. 8)

³Respondent concedes that petitioner has exhausted his state court remedies with respect to this claim. (D.I. 8 at 3)

⁴Respondent's answer also addresses the merits of petitioner's claim. (D.I. 8 at 4-6)

Although petitioner's May 4, 2000 motion for an enlargement of time in which to file a traverse (D.I. 11) was granted on May 15, 2000, to date petitioner has not submitted such a filing.⁵ For the reasons stated below, the court will dismiss the petition and deny the requested relief.

II. DISCUSSION

Effective April 24, 1996, the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996),⁶ amended § 2254 to impose a one-year statute of limitations on the filing of a federal habeas petition by a state prisoner. See 28 U.S.C. § 2244(d)(1); Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 619 n.1 (3d Cir. 1998) (holding that the one-year limitations period set forth in § 2244(d)(1) is a statute of limitations subject to

⁵The motion for enlargement also contained a request that the State produce certain transcripts. The State complied with that request on November 6, 2000, after being granted an extension to produce those records. On December 8, 2000, the court received an unsigned request for a subpoena duces tecum filed by petitioner. The request sought petitioner's psychiatric evaluations that were ordered on October 23, 1995 and March 7, 1996. (D.I. 15)

⁶Since petitioner's habeas application was filed following the enactment of AEDPA, the court will apply the amended standards set forth in AEDPA to petitioner's claims for federal habeas corpus relief. See Lindh v. Murphy, 521 U.S. 320, 326-27 (1997).

equitable tolling, not a jurisdictional bar). The one-year limitations 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;

(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.

Id.

AEDPA further provides that the statute of limitations is tolled during the time that a state prisoner is attempting to exhaust his claims in state court. See id. § 2244(d)(2). Section 2244(d)(2) states that “[t]he 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.” Id. A “properly filed application” under § 2244(d)(2) is a petition “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). Such a petition is considered "pending" within the meaning of § 2244(d)(2) during the time a state prisoner is pursuing his state post-conviction remedies, including the time for seeking discretionary review of any court decisions whether or not such review was actually sought. See Swartz v. Meyers, 204 F.3d 417, 424 (3d Cir. 2000).

In order to avoid the "impermissibly retroactive" application of § 2241(d)(1)'s time limitation, the United States Court of Appeals for the Third Circuit has mandated that petitioners whose convictions became final before April 24, 1996 are entitled to a one-year grace period following the effective date of AEDPA in which to file habeas petitions. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). The Third Circuit has explained that the effect of its ruling in Burns is to "make . . . all other convictions in this circuit otherwise final before the effective date of the AEDPA, April 24, 1996, final on that day for purposes of calculating the limitations period." United States v. Duffus, 174 F.3d 333, 334 (3d Cir. 1999). Petitions filed after the one-year grace period, however, are subject to dismissal for failure to comply with the limitations period imposed by AEDPA. See id.

In the instant action, petitioner was adjudged guilty on April 19, 1994. Although petitioner had the right to appeal the Superior Court's judgment of conviction, state law required him to do so within thirty (30) days after his sentence was imposed. Del. Supr. Ct. R. 6(a)(ii). Thus, petitioner was obligated to file and serve his direct appeal by May 19, 1994. Because petitioner failed to file a timely notice of appeal, his judgment of conviction became final on May 19, 1994, the date of "the expiration of the time for seeking [direct] review."⁷ 28 U.S.C § 2244(d)(1). Since petitioner's conviction became final before the effective date of AEDPA, the statute of limitations with respect to petitioner began to run on April 24, 1996, when AEDPA took effect, and expired one year later on April 23, 1997.⁸

⁷Had petitioner appealed his conviction to the Delaware Supreme Court, the statute of limitations would have started to run on the date on which his time for filing a timely petition for certiorari review expired. See U.S. Supr. Ct. R. 13; Kapral v. United States, 166 F.3d 565, 575, 577 (3d Cir. 1999) (holding that a judgment becomes "final" in the context of § 2254 and § 2255 "on the later of (1) the date on which the Supreme Court affirms the conviction and sentence on the merits or denies the defendant's timely filed petition for certiorari, or (2) the date on which the defendant's time for filing a timely petition for certiorari review expires"); Morris v. Horn, 187 F.3d 333, 337 n.6 (3d Cir. 1999).

⁸Since petitioner's first motion for state post-conviction relief was filed before the limitations period of § 2244(d)(1) began to run and the second was filed long after the expiration of the limitations period, the tolling mechanism of

Petitioner filed his application for federal habeas corpus relief on November 4, 1999,⁹ well after the end of the limitations period. Consequently, his petition is time-barred.¹⁰

§ 2244(d)(2) is not implicated. Similarly, § 2244(d)(1)(D) is not implicated in the instant action since the "evidence" on which petitioner bases his federal application for habeas relief was "discovered" in March 1996, one month before the one-year limitations period began to run.

⁹Courts in this district have treated the date the petition was signed (in the absence of proof of mailing) as the relevant date for purposes of calculating compliance with the limitations period. See, e.g., Murphy v. Snyder, Civ. A. No., 98-415-JJF, at 4 (D. Del. Mar. 8, 1999).

¹⁰To date, petitioner has not sought equitable tolling of the statute of limitations. The court notes in this regard that "equitable tolling is proper only when the 'principles of equity would make [the] rigid application [of a limitation period] unfair.'" Miller, 145 F.3d at 618 (quoting Shendock v. Director, Office of Workers' Comp. Programs, 893 F.2d 1458, 1462 (3d Cir. 1990) (in banc)) (alterations in original). As the Third Circuit has noted, "[t]his 'unfairness' generally occurs 'when the petitioner has 'in some extraordinary way . . . been prevented from asserting his or her rights.'" Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999) (quoting Miller, 145 F.3d at 618) (alterations in original). Although some courts have recognized mental illness as a basis for equitable tolling of a federal statute of limitations, they have done so only where the mental "illness in fact prevent[ed] the sufferer from managing his affairs and thus from understanding his legal rights and acting upon them." Miller v. Runyon, 77 F.3d 189, 191 (7th Cir. 1996); see also Nunnally v. MacCausland, 996 F.2d 1, 6 (1st Cir. 1993); United States v. Page, No. 99 C 6067, 1999 WL 1044829, at *1-2 (N.D. Ill. Nov. 16, 1999); Decrosta v. Runyon, 1993 WL 117583, at *2-3 (N.D.N.Y. Apr. 14, 1993); Speiser v. United States Dept. of Health & Human Services, 670 F. Supp. 380, 384 (D.D.C. 1986); cf. Accardi v. United States, 435 F.2d 1239, 1241 n.2 (3d Cir. 1970) ("Insanity does not prevent a federal statute of

Even if the court were to address petitioner's claim on the merits, it is unlikely that the court would afford him relief. The AEDPA increased the deference a federal court must pay to the factual findings and legal determinations made by state courts. See Dickerson v. Vaughn, 90 F.3d 87, 90 (3d Cir. 1996) (finding amended § 2254 to be a "more deferential test" with respect to state courts' legal and factual findings). Like the prior § 2254(d), amended § 2254(e)(1) provides that factual determinations made by a state court are presumed correct. See 28 U.S.C. § 2254(e)(1). The amended § 2254(e) goes further, however, by placing on the petitioner the burden of rebutting the presumption by clear and convincing evidence. See id. Here, the Superior Court made a

limitations from running."); Boos v. Runyon, 201 F.3d 178, 184 (2d Cir. 2000) ("The question of whether a person is sufficiently mentally disabled to justify tolling of a limitation period is . . . highly case-specific."). Even assuming the correctness of such an approach, petitioner has not made the requisite showing. According to the affidavit of a fellow prisoner, petitioner has been diagnosed as a paranoid schizophrenic and is being treated with a number of prescribed medications. (D.I. 3, ¶¶ 9-10) Such information alone does not establish that petitioner was incapable of preparing and filing a habeas petition between April 24, 1996 and April 23, 1997. See Runyon, 77 F.3d at 192 ("Most mental illnesses today are treatable by drugs that restore the patient to at least a reasonable approximation of normal mentation and behavior. When his illness is controlled he can work and attend to his affairs, including the pursuit of any legal remedies that he may have."). Therefore, at this juncture, equitable tolling of the statute of limitations is not warranted.

Careful competency determination after seeing the petitioner numerous times, hearing the testimony of three experts, and reviewing video and audio tapes of petitioner during his interview with the arresting officer. Petitioner would have great difficulty proving by clear and convincing evidence that the Superior Court erred. Furthermore, any new evidence indicating that petitioner was not competent to stand trial in March 1996 is not relevant to whether petitioner was competent to enter a guilty plea in 1993.

III. CONCLUSION

Therefore, at Wilmington, this 9th day of May, 2001;

IT IS ORDERED that:

1. Petitioner's application seeking habeas relief pursuant to 28 U.S.C. § 2254 (D.I. 2) is dismissed and the writ is denied.

2. For the reasons stated above, petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and a certificate of appealability is not warranted. See United States v. Eyer, 113 F.3d 470 (3d Cir. 1997); 3d Cir. Local Appellate Rule 22.2 (1998).

3. Petitioner's request for subpoena duces tecum (D.I. 15) is denied as moot.

United States District Judge