



**ROBINSON, Chief Judge**

**I. INTRODUCTION**

Petitioner Vonzell Briscoe is an inmate at the Delaware Correctional Center in Smyrna, Delaware. Currently before the court is petitioner's application for habeas corpus relief pursuant to 28 U.S.C. § 2254. (D.I. 2) Because petitioner's application was not timely filed, the court shall dismiss it without reaching its merits.

**II. BACKGROUND**

On January 22, 1997, petitioner pled guilty to one count of possession of cocaine with intent to distribute. (D.I. 18) The same day, the Delaware Superior Court sentenced petitioner to thirty years imprisonment, suspended after a mandatory fifteen years for varying levels of probation. (Id.) Petitioner did not appeal his conviction or sentence to the Delaware Supreme Court. (Id.)

On October 30, 1998, petitioner filed a motion for state post-conviction relief pursuant to Superior Court Criminal Rule 61. (Id.) A Delaware Superior Court Commissioner recommended that the motion be denied and, on September 24, 1999, the Superior Court denied petitioner's motion. (Id.) Petitioner appealed to the Delaware Supreme Court, who dismissed the appeal on February 14, 2000 for failure to prosecute. See Briscoe v. State, 746 A.2d 275 (Del. Feb. 14, 2000).

Petitioner's instant application for federal habeas relief is dated March 28, 2000. (D.I. 2)

### III. DISCUSSION

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

---

<sup>1</sup>Since petitioner's sentence was imposed on January 22, 1997 and his Section 2254 motion is dated March 28, 2000, AEDPA applies to petitioner without any retroactivity problem. See Lindh v. Murphy, 521 U.S. 320 (1997).

(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).

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. 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." 28 U.S.C. § 2244(d)(2). Such an application is considered "pending" 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).

Applying these standards to the case at bar, the statute of limitations with respect to petitioner began to run on February 21, 1997, the date on which petitioner's time for filing a direct appeal to the Delaware Supreme Court expired.<sup>2</sup> See 28 U.S.C. § 2244(d)(1); 10 Del. C. § 147; Del. Supr. Ct. R. 6(a)(ii)

---

<sup>2</sup>If petitioner had filed an appeal to the Delaware Supreme Court, the limitations period would begin to run on the date on which petitioner's time for filing a timely petition for certiorari review expires. See U.S. Supr. Ct. R. 13; Kapral v. United States, 166 F.3d 565, 575 (3d Cir. 1999).

(requiring notice of appeal to be filed within thirty days of imposition of sentence). Petitioner, therefore, had until February 20, 1998 to file his application for federal habeas relief. Since petitioner filed his habeas petition on March 28, 2000, the court concludes that his application is untimely under AEDPA.<sup>3</sup>

#### IV. 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.

---

<sup>3</sup>Petitioner's October 30, 1998 motion for state post-conviction relief was filed **after** the limitations period ended and, therefore, does not implicate the tolling mechanisms of 28 U.S.C. § 2244(d)(2).

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

VONZELL BRISCOE, )  
 )  
 Petitioner, )  
 )  
 v. ) Civil Action No. 00-417-SLR  
 )  
 ROBERT SNYDER, Warden, )  
 )  
 Respondent. )

O R D E R

At Wilmington this 30th day of October, 2001, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254 (D.I. 2) is dismissed and the writ denied.
2. Petitioner's motion to amend (D.I. 8) and motion to extend time (D.I. 19) are denied as moot.
3. 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).

---

United States District Judge