

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ERIC GARNETT, :  
 :  
 Petitioner, :  
 :  
 v. : Civil Action No. 01-422-JJF  
 :  
 ROBERT SNYDER, Warden, and :  
 ATTORNEY GENERAL OF THE :  
 STATE OF DELAWARE, :  
 :  
 Respondents. :  
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Eric Garnett, Pro Se Petitioner.

Thomas E. Brown, Esquire of THE STATE OF DELAWARE DEPARTMENT OF  
JUSTICE, Wilmington, Delaware.  
Attorney for Respondents.

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**MEMORANDUM OPINION**

April 5, 2002

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (D.I. 2) filed by Petitioner Eric Garnett. Also pending is Petitioner's Motion to Amend the Petition and Expand the Record. (D.I. 15.) For the reasons set forth below, the Court will dismiss the Petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1). The Court will deny as moot Petitioner's Motion to Amend the Petition and Expand the Record.

**I. BACKGROUND**

On December 28, 1995, Petitioner was charged by information with burglary, possession of burglar's tools, theft, and three weapons offenses. A jury in the Delaware Superior Court found Petitioner guilty as charged on August 8, 1996. On November 15, 1996, the Superior Court sentenced Petitioner as a habitual offender to life in prison. Petitioner did not file a direct appeal to the Delaware Supreme Court. Petitioner is currently serving his sentence at the Delaware Correctional Center in Smyrna, Delaware.

On October 28, 1997, Petitioner filed in the Superior Court a motion to correct his sentence pursuant to Rule 35 of the Superior Court Rules of Criminal Procedure. The Superior Court denied Petitioner's motion to correct his sentence on December 5,

1997. The Delaware Supreme Court affirmed. Garnett v. State, No. 529, 1997, 1998 WL 184489 (Del. Apr. 9, 1998). On November 26, 1997, while his Rule 35 motion was pending, Petitioner filed in the Superior Court a motion for acquittal and for a new trial, which the Superior Court denied. State v. Garnett, No. IK95-12-0289, 1998 WL 442706 (Del. Super. Ct. May 6, 1998.) Petitioner did not appeal to the Delaware Supreme Court.

On September 14, 1998, Petitioner filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. At the recommendation of a Commissioner, the Superior Court denied the Rule 61 motion. State v. Garnett, No. 9512000763 (Del. Super. Ct. Feb. 24, 2000). The Delaware Supreme Court remanded the matter for an evidentiary hearing on Petitioner's claim of ineffective assistance of counsel for failing to file a direct appeal. Garnett v. State, No. 123, 2000 (Del. June 30, 2000). After appointing counsel and conducting a hearing, the Superior Court rejected Petitioner's claim of ineffective assistance. State v. Garnett, No. 9512000763 (Del. Super. Ct. Aug. 29, 2000). The Delaware Supreme Court affirmed. Garnett v. State, No. 123, 2000, 2001 WL 1381218 (Del. Mar. 23, 2001).

Petitioner has now filed with the Court the current Petition seeking federal habeas corpus relief. Petitioner alleges that:

- (1) the Superior Court lacked jurisdiction to try him because he

was never indicted by a grand jury; (2) he was improperly sentenced as a habitual offender; (3) counsel rendered ineffective assistance in several respects; and (4) the Delaware Supreme Court wrongly remanded his motion for postconviction relief to the Superior Court for an evidentiary hearing. (D.I. 2.) 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 the Petition as untimely.

## II. 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 § 2254 habeas petitions by state prisoners. Stokes v. District Attorney of the County of Philadelphia, 247 F.3d 539, 541 (3d Cir.), cert. denied, 122 S. Ct. 364 (2001). Effective April 24, 1996, the AEDPA provides:

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

In the matter at hand, Respondents contend that the Petition is untimely because Petitioner filed it more than one year after his conviction became final. Petitioner argues that the one-year period of limitation does not apply because some of the events leading to his conviction occurred prior to the enactment of the AEDPA. (D.I. 15 at 4.) Contrary to Petitioner's argument, the one-year period applies even where a petitioner's conviction became final prior to the enactment of the AEDPA. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998) (stating that petitioners whose convictions became final prior to the AEDPA must be afforded a one-year grace period). Petitioner's conviction became final on December 15, 1996, several months after the effective date of the AEDPA. The fact that some of the events leading to his conviction occurred prior to the enactment of the AEDPA is not determinative. The Court thus concludes that the one-year period of limitation applies to the current Petition.

As described above, Petitioner's sentence was imposed on November 15, 1996. Although Petitioner did not file a direct appeal, the thirty-day period in which he could have filed a timely appeal is encompassed within the meaning of "the expiration of the time for seeking [direct] review," as provided in § 2244(d)(1)(A). See Nara v. Frank, 264 F.3d 310, 314 (3d Cir. 2001) (stating that where petitioner did not file a direct

appeal, his conviction became final when the time for filing a direct appeal expired); Kapral v. United States, 166 F.3d 565, 576 (3d Cir. 1999) (stating that the limitation period begins to run at the expiration of the time for filing a direct appeal if none is filed). Therefore, Petitioner's conviction became final on December 15, 1996, thirty days after the Superior Court imposed his sentence. See Del. R. S. Ct. 6(a)(ii) (prescribing a thirty-day limit from the imposition of sentence for filing a direct appeal in a criminal case).

The Court's docket reflects that the current Petition was filed on June 21, 2001. (D.I. 2.) A pro se prisoner's habeas petition, however, is considered 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. Burns, 134 F.3d at 113. Here, Petitioner certifies that he deposited his Petition, addressed to the Court, in the prison mail on May 29, 2001. (D.I. 2, Certificate of Service.) The Petition itself is also dated May 29, 2001. (D.I. 2 at 7.) The Court therefore finds that Petitioner filed his Petition on May 29, 2001.

In short, the one-year period of limitation began running when Petitioner's conviction became final on December 15, 1996. His Petition was filed more than four years later on May 29, 2001. That, however, does not end the inquiry because the one-year period of limitation may be either 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).

As described above, Petitioner has pursued postconviction relief in the state courts in a variety of ways. Respondents assert that the Court need not determine whether the statutory tolling provision applies to each of the periods during which Petitioner's several postconviction proceedings were pending. They argue that even if the one-year period was tolled while each postconviction proceeding was pending, more than one year lapsed before the Petition was filed. (D.I. 13 at 4.)

An examination of the record confirms that more than one year lapsed during which no postconviction proceeding was pending. First, from December 15, 1996 (the date Petitioner's conviction became final) through October 28, 1997, (the date he filed a Rule 35 motion), a period of 316 days lapsed during which no postconviction proceeding was pending. Those 316 days are counted toward the one-year period. The period of limitation began running again on June 6, 1998, thirty days after the

Superior Court denied his motion for acquittal and new trial. See Swartz v. Meyers, 204 F.3d 417, 422 (3d Cir. 2000) (holding that a postconviction proceeding is "pending" under § 2244(d) (2) until the time to appeal expires). The one-year period ran for 100 more days until September 14, 1998, when Petitioner filed his Rule 61 motion for postconviction relief. After the conclusion of his Rule 61 proceedings on March 23, 2001, 66 more days lapsed before Petitioner filed the current Petition on May 29, 2001.

In sum, at least 482 days lapsed during which no postconviction proceeding was pending. This period of time, well in excess of one year, must be counted. For this reason, the Court concludes that the statutory tolling provision cannot render the Petition timely filed.

### **C. Equitable Tolling**

Additionally, the one-year period of limitation may be subject to equitable tolling. 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) 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, Petitioner has failed to articulate any extraordinary circumstances that prevented him from filing his Petition with this Court in a timely manner. Indeed, he has failed to offer any explanation for the delay. The Court simply cannot find any extraordinary circumstances that warrant applying equitable tolling. Accordingly, the Court will dismiss the Petition as time barred.

**D. Motion to Amend Petition and Expand Record**

After Respondents filed their Answer, Petitioner filed a document containing his Reply, as well as a Motion to Amend the Petition and Expand the Record. (D.I. 15). Petitioner first seeks to "amend" the Petition by substituting Thomas Carroll for Robert Snyder as a respondent because Carroll has replaced Snyder as Warden of the Delaware Correctional Center. Petitioner is advised that as Snyder's successor, Carroll was automatically substituted as a respondent. See Fed. R. Civ. P. 25(d)(1). Accordingly, his Motion to Amend will be denied as moot.

Petitioner also seeks to expand the record to include the

Delaware Supreme Court's June 30, 2000 Order remanding his Rule 61 motion for an evidentiary hearing, as well as the entire transcript of the hearing on remand. The Court notes that copies of these two documents are already part of the record.

Petitioner filed a "Supporting Documentation for Petition for Writ of Habeas Corpus, 28 U.S.C. § 2254," which includes a copy of the June 30, 2000 Order of the Delaware Supreme Court. (D.I. 3.) A copy of the transcript of the hearing on remand is also included in the state court records filed by Respondents on December 12, 2001. (D.I. 17, App. to Appellant's Supp. Mem., Feb. 9, 2001.) Because copies of these documents are already included in the record, Petitioner's Motion to Expand the Record will be denied as moot.

#### **E. 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 denies a habeas petition on procedural grounds without reaching the underlying constitutional claim, the prisoner 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.

For the reasons discussed above, Petitioner’s habeas petition is barred by the one-year period of limitation. The Court cannot conclude that the period should be statutorily or equitably tolled to render the petition timely. The Court is convinced that reasonable jurists would not debate otherwise. Petitioner, therefore, has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not issue.

### **III. CONCLUSION**

For the reasons discussed above, the Court will dismiss as untimely the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Eric Garnett. The Court will also deny as moot Petitioner’s Motion to Amend the Petition and Expand the Record, and will not issue a certificate of appealability.

An appropriate Order will be entered.

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 :

**O R D E R**

At Wilmington, this 5th day of April 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Eric Garnett's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (D.I. 2) is DISMISSED, and the relief requested therein is DENIED.
2. Petitioner's Motion to Amend the Petition and Expand the Record (D.I. 15) is DENIED as moot.
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).

IT IS SO ORDERED.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE