

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CURTIS WOOD,
a/k/a Alphonzo C. Scott,

Petitioner,

v.

ROBERT SNYDER, Warden, and
ATTORNEY GENERAL OF
THE STATE OF DELAWARE,

Respondents.

Civil Action No. 00-70-GMS

MEMORANDUM AND ORDER

Following a jury trial in the Delaware Superior Court, Curtis Wood, a/k/a Alphonzo C. Scott, was convicted of several drug offenses. He is presently incarcerated in the Delaware Correctional Center in Smyrna, Delaware. Wood has filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. As explained below, the court will dismiss Wood's petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1).

I. BACKGROUND

On September 21, 1994, a jury in the Delaware Superior Court found Curtis Wood guilty of possession with intent to deliver cocaine, possession of heroin, possession of marijuana, maintaining a vehicle for keeping controlled substances, and conspiracy. The Superior Court (Goldstein, J.) sentenced Wood on September 22, 1994, to thirty years imprisonment to be suspended after twenty years for decreasing levels of supervision. The Delaware Supreme Court

affirmed Wood's conviction and sentence. *Wood v. State*, No. 379, 1994, 1996 WL 145823 (Del. Mar. 11, 1996). Wood did not file a motion for postconviction relief in the state courts.

Wood has now filed the current petition for a writ of habeas corpus. In his petition, Wood alleges that: (1) trial counsel rendered ineffective assistance; (2) the prosecutor engaged in misconduct; (3) the trial court erred by admitting a prior drug conviction into evidence; (4) the Delaware Supreme Court wrongly affirmed the trial court's decision to admit the prior drug conviction into evidence; and (5) the evidence was insufficient to support his convictions. (D.I. 2.) The respondents argue that the petition is subject to a one-year period of limitation that expired before Wood filed it. Thus, they ask the court to dismiss the petition as time barred.

II. TIMELINESS

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, the Delaware Supreme Court affirmed Wood's conviction and

sentence on March 11, 1996. Wood was then allowed ninety days in which to file a petition for a writ of certiorari with the United States Supreme Court. *See* Supreme Court Rule 13. Although Wood did not file a petition with 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 conclusion of direct review or the expiration of the time for seeking such review,” as set forth 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 of § 2244(d)(1)(A) begins to run at the expiration of the time for seeking review in the United States Supreme Court). Wood’s conviction, therefore, became final on June 9, 1996, ninety days after the Delaware Supreme Court affirmed his conviction.

The court’s docket reflects that Wood’s petition was filed on February 3, 2000. (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 court docket it. *Burns v. Morton*, 134 F.3d 109, 113 (3d Cir. 1998). Wood has not provided the court with any documentation establishing the date he submitted his petition to prison officials for mailing. The petition itself, however, is dated January 12, 2000, and is stamped “Received” by the court on January 18, 2000. In the absence of proof of the date of delivery, the court deems Wood’s habeas petition filed on January 12, 2000, the earliest date he could have submitted it to prison officials for mailing.

Notwithstanding, Wood’s habeas petition was filed two and one-half years after the one-year period of limitation expired. 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).¹

B. Equitable Tolling

The one-year period of limitation prescribed in § 2244(d)(1) 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 matter at hand, Wood failed to reply to the respondents’ argument that his petition is time barred. He has offered no explanation for waiting three and one-half years after his conviction became final to file his habeas petition. Based on its review of the entire record, the court can discern no circumstances that would warrant equitable tolling.

For these reasons, the court concludes that Wood’s habeas petition was filed after the

¹ The statutory tolling provision excludes from the one-year period of limitation the period of time during which an application for state postconviction relief was pending. 28 U.S.C. § 2244(d)(2). Here, Wood acknowledges that he filed no such application. (D.I. 2, ¶ 10.) The statutory tolling provision, therefore, does not apply.

one-year period of limitation expired. Neither the statutory tolling provision nor the doctrine of equitable tolling applies. Accordingly, his habeas petition will be dismissed as untimely.

III. 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 the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

When the court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, 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, the court has concluded that Wood’s habeas petition is time barred, and that the one-year period of limitation should not be statutorily or equitably tolled. The court is persuaded that reasonable jurists would not find its procedural ruling debatable. Wood has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Wood'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. 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.

Dated: March 22, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE