

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

ROBERT L. HULL,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 00-87-GMS
)	
ROBERT SNYDER, Warden, and)	
ATTORNEY GENERAL OF)	
THE STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Following a jury trial in the Delaware Superior Court, petitioner Robert L. Hull was convicted of unlawful sexual intercourse. He is presently incarcerated at the Delaware Correctional Center in Smyrna, Delaware, serving a sentence of life in prison. Hull 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 Hull’s petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d).

I. BACKGROUND

On June 18, 1993, a jury in the Delaware Superior Court found Robert L. Hull guilty of unlawful sexual intercourse in the first degree. The victim was Hull’s nine-year-old stepdaughter. On September 10, 1993, the Superior Court sentenced Hull to life in prison. The Delaware Supreme Court affirmed Hull’s conviction and sentence on September 6, 1994. *Hull v. State*, No. 337, 1993 (Del. Sept. 6, 1994).

On September 9, 1997, Hull filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court denied the motion on the ground that Hull's claims were procedurally barred. *State v. Hull*, No. 88K01144DI, 1997 WL 819116 (Del. Super. Ct. Dec. 4, 1997). The Delaware Supreme Court affirmed. *Hull v. State*, No. 533, 1997, 1998 WL 231156 (Del. Apr. 27, 1998).

Hull has now filed with this court the current petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his petition, Hull alleges "abuse of judicial discretion," but provides no further information. (D.I. 2 at 5.) The respondents argue that the petition is subject to a one-year period of limitation that expired before Hull filed it. Thus, they ask the court to dismiss the petition as time barred.

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 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 § 2254 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 under § 2244(d)(1)(A)).

Hull's conviction became final prior to the enactment of the AEDPA. He was sentenced on September 10, 1993. The Delaware Supreme Court affirmed the judgment of conviction on September 6, 1994. Hull 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 Hull 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). Therefore, Hull's conviction became final on December 5, 1994, ninety days after the Delaware Supreme Court affirmed his conviction, and well before the enactment of the AEDPA on April 24, 1996. Thus, he could have filed a timely habeas petition with this court not later than April 23, 1997. *See Burns*, 134 F.3d at 111.

The court's docket reflects that Hull's habeas petition was filed on February 10, 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 docketed it. *Id.* at 113. Hull has provided the court with no documentation establishing the date he delivered his petition to prison officials for mailing. The petition itself, however, is dated January 20, 2000. (D.I. 2 at 7.) In the absence of proof of the date of delivery, the court deems the petition filed on January 20, 2000, the date Hull signed it.

Obviously Hull's habeas petition was filed well beyond the April 23, 1997 deadline. That, however, does not end the inquiry because § 2244(d)'s 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, Hull filed in the Superior Court a Rule 61 motion for postconviction relief on September 9, 1997. The one-year period of limitation, however, expired on April 23, 1997. Hull's Rule 61 motion, filed after the one-year period expired, simply has no effect on the timeliness inquiry in the current matter.

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)).

Here, Hull has failed to articulate any extraordinary circumstances that prevented him from filing his habeas petition with this court in a timely manner. He has not explained why he waited until September 9, 1997, to file his Rule 61 motion. Nor has he explained why he waited until January 20, 2000, to file the current petition. In short, the court can discern no circumstances which would permit applying the doctrine of equitable tolling. Hull’s 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 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, Hull’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. The court is convinced that reasonable jurists would not debate otherwise. Hull 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. Robert L. Hull’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: April 4, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE