

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

RALPH DUONNOLO,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-140-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, Ralph Duonnolo was convicted of first degree murder and possession of a deadly weapon during the commission of a felony. He was sentenced to life in prison without parole. Duonnolo has now 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 Duonnolo’s petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1).

I. BACKGROUND

On March 23, 1976, a jury in the Delaware Superior Court found Ralph Duonnolo guilty of first degree murder and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced Duonnolo on January 28, 1977, to life in prison without parole for murder, and five years in prison for possession of a weapon. The Delaware Supreme Court

affirmed Duonnolo's conviction and sentence on December 28, 1978. *Duonnolo v. State*, 397 A.2d 126 (Del. 1978). Duonnolo did not seek postconviction relief in the state courts.

Duonnolo has now filed the current petition for federal habeas corpus relief. In his petition, Duonnolo raises five claims for relief: (1) counsel rendered ineffective assistance; (2) the police conducted a warrantless search of his car; (3) the police obtained evidence from his wife without his consent; (4) a fellow inmate testified against him at trial in exchange for a lesser sentence; and (5) the police took hair samples from him without advising him of his rights. (D.I. 2 at 5-6.) The respondents argue that the petition is subject to a one-year period of limitation that expired before Duonnolo 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 habeas petitions by state prisoners. *Stokes v. District Attorney of 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 habeas 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)).

Duonnolo's conviction became final before the AEDPA was enacted. The Delaware Supreme Court affirmed Duonnolo's conviction and sentence on December 28, 1978. Duonnolo 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 13.1. Although Duonnolo 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, Duonnolo's conviction became final on March 27, 1979, ninety days after the Delaware Supreme Court affirmed his conviction, and many years 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 Duonnolo's habeas petition was filed on March 1, 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 court docketed it. *Id.* at 113. Duonnolo 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 23,

2001. In the absence of proof respecting the date of delivery, the court deems Duonnolo's petition filed on January 23, 2001, the date he signed it. *See Eley v. Snyder*, Civ. No. 00-34-GMS, 2002 WL 441325, *2 (D. Del. Mar 20, 2002).

Notwithstanding, Duonnolo'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. Equitable Tolling

The one-year period of limitation is not jurisdictional and is 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, Duonnolo has failed to articulate any extraordinary circumstances that prevented him from filing his habeas petition in a timely manner. He has not explained why he waited seventeen years to file the current petition. The only possible excuse the court can glean from

Duonnolo's filings is that he is a pro se litigant without any legal training.

Unfortunately for Duonnolo, his unfamiliarity with federal habeas filing requirements does not excuse his failure to comply with the one-year period of limitation. Several courts of appeals have ruled that an incarcerated pro se petitioner's lack of legal knowledge does not constitute an extraordinary circumstance warranting equitable tolling of the one-year period of limitation. *See Delaney v. Matesanz*, 264 F.3d 7, 15 (1st Cir. 2001); *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000), *cert. denied*, 531 U.S. 1194 (2001); *United States v. Cicero*, 214 F.3d 199, 203 (D.C. Cir. 2000); *Felder v. Johnson*, 204 F.3d 168, 171 (5th Cir.), *cert. denied*, 531 U.S. 1035 (2000).

In short, the court can discern no circumstances which would permit applying the doctrine of equitable tolling. Duonnolo's habeas petition will be dismissed as untimely.¹

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

¹ The AEDPA provides for statutory tolling of the one-year period of limitation while a properly filed application for state postconviction relief is pending. 28 U.S.C. § 2244(d)(2). Because Duonnolo did not file an application for state postconviction relief, the statutory tolling provision does not apply.

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, Duonnolo’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 persuaded that reasonable jurists would not debate otherwise. Duonnolo 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. Ralph Duonnolo’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: May 22, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE