

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

RAHEEM LOVE a/k/a)	
Raymond Demby,)	
)	
Petitioner,)	
)	Civil Action No. 01-435-GMS
v.)	
)	
RAPHAEL WILLIAMS, Warden,)	
and ATTORNEY GENERAL OF)	
THE STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Following a jury trial in the Delaware Superior Court, Raheem Love was convicted of possession of cocaine with intent to deliver. He was sentenced to fifteen years in prison followed by fifteen years of decreasing levels of supervision, and is presently incarcerated at the Delaware Correctional Center in Smyrna, Delaware. Love 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 Love’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 11, 1996, a jury in the Delaware Superior Court found Raheem Love guilty of possession of cocaine with intent to deliver. The Superior Court (Alford, J.) sentenced Love on May 9, 1996, to thirty years imprisonment to be suspended after fifteen years for decreasing levels of supervision. The Delaware Supreme Court affirmed Love’s conviction and sentence on

June 27, 1997. *Demby v. State*, 695 A.2d 1127 (Del. 1997).

On May 17, 1998, Love filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. (D.I. 23, Motion for Postconviction Relief.) The Superior Court denied the motion on August 7, 1998. *State v. Demby*, Cr. A. No. IK95-11-0556 (Del. Super. Ct. Aug. 7, 1998). Love did not appeal to the Delaware Supreme Court. Love filed a second Rule 61 motion on October 1, 1999, which the Superior Court summarily dismissed on October 12, 1999. *State v. Demby*, Cr. A. No. IK95-11-0556-R2 (Del. Super. Ct. Oct. 12, 1999). He did not appeal to the Delaware Supreme Court.

Love has now filed the current petition for federal habeas corpus relief. In his petition, Love alleges that: (1) trial counsel rendered ineffective assistance in several respects; and (2) the prosecutor did not establish the chain of custody of the drugs introduced into evidence. (D.I. 2 at ¶ 12.) The respondents argue that the petition is subject to a one-year period of limitation that expired before Love 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 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).

Love was convicted on March 11, 1996, and was sentenced on May 9, 1996. The Delaware Supreme Court affirmed his conviction and sentence on June 27, 1997. Love 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 Love 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). Love’s conviction, therefore, became final on September 25, 1997, ninety days after the Delaware Supreme Court affirmed his conviction.

The court’s docket reflects that Love’s petition was filed on June 26, 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 docket it. *Burns v. Morton*, 134 F.3d 109, 113 (3d Cir. 1998). Love has not provided the court with any documentation establishing the date he submitted his petition to prison officials for mailing. Moreover, the petition itself bears no date. His application to proceed *in forma pauperis*, however, is dated May 25, 2001. In these circumstances, the court deems Love’s habeas petition filed on May 25,

2001, the earliest possible date discernible from the record. *Cf. Jones v. Morton*, 195 F.3d 153, 158 (3d Cir. 1999)(assuming that petition was filed on the earliest date discernible from the record).

Notwithstanding, Love's habeas petition was filed well 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 id.*

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). An application is “‘properly filed’ when its delivery and acceptance are in compliance with the applicable laws and rules governing filings.” *Artuz v. Bennett*, 531 U.S. 4, 8 (2000).

As described above, Love filed his first Rule 61 motion for postconviction relief on May 17, 1998, which the Superior Court denied on August 7, 1998. The respondents acknowledge, and correctly so, that the one-year period was tolled while Love's first Rule 61 motion was pending. Although Love did not appeal from the denial of his first Rule 61 motion, the motion was pending until the expiration of the thirty-day period in which he could have filed a notice of appeal. *See Swartz v. Meyers*, 204 F.3d 417, 424 (3d Cir. 2000); Del. R. Sup. Ct. 6(a)(iii) (prescribing a thirty-day limit for filing a notice of appeal in postconviction proceedings). The one-year period was thus tolled from May 17, 1998, until September 6, 1998, thirty days after the Superior Court denied his first Rule 61 motion.

More than one year later, on October 1, 1999, Love filed his second Rule 61 motion in the Superior Court. By that time, however, the one-year period had expired. Love's second Rule 61 motion, filed after the one-year period expired, has no effect on the timeliness inquiry in this matter. *See Simpson v. Snyder*, Civ. A. No. 00-737-GMS (D. Del. May 14, 2002).

In short, the court finds that the one-year period was statutorily tolled while Love's first Rule 61 motion was pending. Nonetheless, the one-year period expired before Love filed his federal habeas petition on May 25, 2001. The statutory tolling provision, therefore, does not render Love's habeas petition timely filed.

C. Equitable Tolling

The one-year period of limitation is not jurisdictional and may be equitably tolled. *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, Love has failed to articulate any extraordinary circumstances that prevented him

from filing his federal habeas petition within the one-year period of limitation. Despite the respondents' request to dismiss the petition as untimely, Love has not explained why he waited until October 1, 1999, to file his second Rule 61 motion. Nor has he explained why he waited until May 25, 2001, to file his federal habeas petition.

In short, the court can discern no circumstances that warrant applying the doctrine of equitable tolling. Love'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 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, Love's habeas petition is barred by the one-year period of limitation. The court has concluded that neither the statutory tolling provision nor the doctrine of equitable tolling renders the petition timely. The court is persuaded that reasonable jurists

would not find its conclusions debatable. Love 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. Raheem Love a/k/a Raymond Demby'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