

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

DONALD PAULS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-472-GMS
)	
RICK KEARNEY, Warden, and)	
ATTORNEY GENERAL OF)	
THE STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Following a jury trial in the Delaware Superior Court, Donald Pauls was convicted of robbery, assault, burglary, possession of a deadly weapon by a person prohibited, and six counts of possession of a deadly weapon during the commission of a felony (“PDWDCF”). Pauls is currently serving his sentences at the Sussex Correctional Institution in Georgetown, Delaware. He has filed with the court the current petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his six PDWDCF convictions and sentences. For the reasons set forth below, the court will dismiss Pauls’ petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d).

I. BACKGROUND

On January 19, 1983, Donald Pauls entered a convenience store in Seaford, Delaware, where a clerk was attending and cleaning the store. No one else was in the store. The clerk tried to resist as Pauls approached her with a broken glass bottle, and a piece of glass lodged in her

hand. Pauls hit the clerk in the head with a stick, yet she managed to activate a silent alarm. He kicked her in the stomach and again hit her with the stick. The clerk ran out the front door, but Pauls followed her and kicked her again. She then ran back inside the store, but Pauls followed and ordered her to open the cash registers. Pauls emptied the cash registers and attempted to flee. By that time, the Seaford police had responded to the silent alarm, and apprehended Pauls as he ran out the door.

Based on these events, Pauls was charged with first degree robbery, first degree assault, second degree burglary, and possession of a deadly weapon by a person prohibited. Pauls was also charged with six counts of PDWDCF, one count for possessing each of the two weapons (the broken bottle and the stick) during each of the three underlying felonies (robbery, assault, and burglary). On April 27, 1983, a jury in the Delaware Superior Court found Pauls guilty as charged. The Superior Court sentenced Pauls on July 22, 1983, to six consecutive three-year terms for PDWDCF.¹ On direct appeal, the Delaware Supreme Court affirmed. *Pauls v. State*, 476 A.2d 157 (Del. 1990).

Pauls then initiated postconviction proceedings in the Superior Court by filing a motion for postconviction relief on February 3, 1987, which was denied on October 21, 1987. The Delaware Supreme Court affirmed. *Pauls v. State*, No. 377, 1987, 1989 WL 8105 (Del. Jan. 12, 1989). Pauls also filed a motion for correction of sentence on May 20, 1993, which the Superior Court denied on July 23, 1993. The Delaware Supreme Court dismissed Pauls' appeal because he failed to file a brief and an appendix. *Pauls v. State*, No. 302, 1993, 1994 WL 10858 (Del.

¹ The Superior Court also sentenced Pauls to an additional twenty-two years on the remaining counts. Pauls' current petition challenges only his six PDWDCF convictions and sentences.

Jan. 5, 1994).

Pauls took no further action until April 8, 1997, when he filed a petition for federal habeas corpus relief, which was dismissed without prejudice for failure to exhaust state court remedies.² *Pauls v. Kearney*, Civ. A. No. 97-358-GMS, 2000 WL 1346693 (D. Del. Sept. 12, 2000). On September 28, 2000, he returned to the Superior Court and filed a “motion for writ of error,” which was treated as a motion for postconviction relief and denied on October 10, 2000. The Delaware Supreme Court affirmed. *Pauls v. State*, No. 520, 2000, 2001 WL 233654 (Del. Mar. 6, 2001).

Pauls has now filed the current petition for federal habeas corpus relief. In his petition, Pauls asserts that his six PDWDCF convictions, based on the possession of two weapons during three felonies, are contrary to the legislative intent of the Delaware statute. (D.I. 2 at 5.) He asks the court to vacate three of those six convictions. (*Id.*) The respondents argue that Pauls’ petition is subject to a one-year period of limitation that expired before he filed it, and 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

² The court’s docket reflects that Pauls’ prior federal habeas petition was filed on June 27, 1997. The petition itself, however, is dated April 8, 1997. For purposes of the current analysis, the court deems Pauls’ prior federal habeas petition filed on April 8, 1997.

F.3d 539, 541 (3d Cir.), *cert. denied*, 122 S. Ct. 364 (2001). Effective April 24, 1996, the AEDPA provides in relevant part:

- (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). 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)).

Pauls’ convictions became final long before the AEDPA was enacted. The Delaware Supreme Court affirmed Pauls’ convictions and sentences on April 9, 1984. Although Pauls did not seek review by the United States Supreme Court, the ninety-day period in which he could have filed a petition for a writ of certiorari 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, Pauls’ convictions became final in July 1984, several years before the enactment of the AEDPA. 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 Pauls' current habeas petition was filed on July 10, 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. Pauls 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 June 25, 2001. In the absence of proof respecting the date of delivery, the court deems Pauls' petition filed on June 25, 2001, the date he signed it. *See Eley v. Snyder*, Civ. No. 00-34-GMS, 2002 WL 441325, *2 (D. Del. Mar 20, 2002).

Even so, Pauls' habeas petition was filed well beyond the April 23, 1997 deadline. That, however, does not necessarily require dismissal of the petition as untimely, because the one-year period may be either statutorily or equitably tolled. *See Jones v. Morton*, 195 F.3d 153, 158 (3d Cir. 1999).

B. Statutory and Equitable 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 for state postconviction review 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).

In addition, the one-year period of limitation 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).

Relevant to the tolling analysis in the case at hand are Pauls' prior federal habeas petition and his motion for writ of error.³ As described previously, Pauls filed a federal habeas petition on April 8, 1997, which was dismissed without prejudice for failure to exhaust state court remedies on September 12, 2000. The United States Supreme Court has ruled that the one-year period cannot be statutorily tolled under § 2244(d)(2) while a prior federal habeas petition was pending. *Duncan v. Walker*, 533 U.S. 167, 172 (2001). *Duncan*, however, left open the possibility that the one-year period may be equitably tolled while a prior federal habeas petition was pending. *Id.* at 183 (Stevens, J., concurring).

The court need not determine whether the one-year period should be equitably tolled while Pauls' prior federal habeas petition was pending. As the following analysis demonstrates, even if the court assumes that the one-year period was equitably tolled from April 8, 1997, through September 12, 2000, more than one year lapsed during which no proceedings of any kind were pending in any court before Pauls filed the current habeas petition.

The one-year period of limitation began running on April 24, 1996, when the AEDPA

³ The court is aware of Pauls' earlier postconviction proceedings that terminated prior to the enactment of the AEDPA. Prior to April 24, 1996, the federal habeas statute imposed no specific period of limitation for filing habeas petitions. Thus, any postconviction proceedings that terminated prior to April 24, 1996, are not relevant to the tolling analysis.

was enacted. By the time Pauls filed his prior federal habeas petition on April 8, 1997, 350 days had lapsed during which no postconviction proceedings were pending. These 350 days must be counted toward the one-year period. The one-year period began running again on September 13, 2000, the day after the court dismissed Pauls' prior federal habeas petition. An additional fifteen days lapsed before Pauls filed his motion for writ of error in the Superior Court on September 28, 2000. Assuming that the one-year period was statutorily tolled while the motion for writ of error was pending until March 6, 2001,⁴ another 110 days passed before Pauls filed the current federal habeas petition on June 25, 2001.

In sum, 475 days lapsed during which no proceedings of any kind were pending in any court before Pauls filed his current habeas petition. Even if the court tolls each of the periods of time described above during which various proceedings were pending, more than one year lapsed during which no proceedings were pending. Accordingly, the court will dismiss Pauls' petition as time barred.⁵

⁴ It appears that the one-year period should not be statutorily tolled while Pauls' motion for writ of error was pending because the Delaware Supreme Court ruled that it was untimely. *Pauls*, 2001 WL 233654 at **1. Because the Delaware Supreme Court found it untimely, it was not "properly filed" for statutory tolling purposes. See *Fahy v. Horn*, 240 F.3d 239, 244 (3d Cir.), *cert. denied*, 122 S. Ct. 323 (2001); *Woods v. Kearney*, ___ F. Supp. 2d ___, 2002 WL 1845006, *4 (D. Del. Aug. 9, 2002). The court need not make such a determination, however, because the petition is untimely even if the one-year period was statutorily tolled while Pauls' motion for writ of error was pending.

⁵ The court notes that Pauls has failed to articulate any extraordinary circumstances that prevented him from filing his habeas petition in a timely manner. Indeed, he has not provided any reason for his delay in filing the current petition. Thus, other than the delay that occurred while Pauls' prior federal habeas petition was pending, the court can discern no circumstances which would permit applying the doctrine of equitable tolling.

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, Pauls’ habeas petition was filed beyond the one-year period of limitation. Applying the statutorily tolling provision and the doctrine of equitable tolling does not render the petition timely. The court is persuaded that reasonable jurists would not debate otherwise. Pauls 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. Donald Pauls’ 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: September 4, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE