

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RONALD W. TROTMAN, :  
 :  
 Petitioner, :  
 :  
 v. : Civil Action No. 01-653-JJF  
 :  
 ROBERT SNYDER, Warden, and :  
 ATTORNEY GENERAL OF THE :  
 STATE OF DELAWARE, :  
 :  
 Respondents. :  
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Ronald W. Trotman, Pro Se Petitioner.

Loren C. Meyers, Esquire of THE STATE OF DELAWARE DEPARTMENT OF  
JUSTICE, Wilmington, Delaware.  
Attorney for Respondents.

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**MEMORANDUM OPINION**

June 17, 2002

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (D.I. 2) filed by Petitioner Ronald W. Trotman. For the reasons set forth below, the Court will dismiss the Petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1).

**I. BACKGROUND**

On February 5, 1996, a grand jury in the Delaware Superior Court charged Petitioner with one count of robbery in the second degree. Petitioner appeared before the Superior Court on June 3, 1996, and pleaded guilty as charged. The Superior Court determined that Petitioner was a habitual offender, and on August 16, 1996, sentenced him to ten years in prison. Petitioner did not file a direct appeal to the Delaware Supreme Court. He is currently serving his sentence at the Delaware Correctional Center in Smyrna, Delaware.

On October 3, 1996, Petitioner moved for a reduction of sentence, which the Superior Court denied on November 12, 1996. On April 7, 1998, Petitioner filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. At the recommendation of a Commissioner, the Superior Court denied the Rule 61 motion. State v. Trotman, No. 9512012402, 1999 WL 463709 (Del. Super. Ct.

Mar. 24, 1999). The Delaware Supreme Court affirmed. Trotman v. State, No. 155, 1999, 1999 WL 1090571 (Del. Oct. 21, 1999).

Petitioner has now filed with the Court the current Petition seeking federal habeas corpus relief, in which he alleges that counsel rendered ineffective assistance in failing to inform him of his right to proceed to trial. (D.I. 2.) Respondents assert that the Petition is subject to a one-year period of limitation that expired before Petitioner filed it, and ask the Court to dismiss the Petition as untimely.

## 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).

As described above, Petitioner's sentence was imposed on August 16, 1996. Although Petitioner did not file a direct appeal, the thirty-day period in which he could have filed a timely appeal is encompassed within the meaning of "the expiration of the time for seeking [direct] review," as provided in § 2244(d)(1)(A). See Nara v. Frank, 264 F.3d 310, 314 (3d Cir. 2001) (stating that where petitioner did not file a direct appeal, his conviction became final when the time for filing a direct appeal expired); Kapral v. United States, 166 F.3d 565, 576 (3d Cir. 1999) (stating that the limitation period begins to run at the expiration of the time for filing a direct appeal if none is filed). Therefore, Petitioner's conviction became final on September 15, 1996, thirty days after the Superior Court imposed his sentence. See Del. R. S. Ct. 6(a)(ii) (prescribing a thirty-day limit from the imposition of sentence for filing a direct appeal in a criminal case).

The Court's docket reflects that the current Petition was filed on September 27, 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 district court docketed it. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Petitioner 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 September 11, 2001. In the absence of proof respecting the date of delivery, the Court deems the Petition filed on September 11, 2001, the earliest possible date he could have delivered it to prison officials for mailing. See Murphy v. Snyder, Civ. A. No. 98-415-JJF, at 4 (D. Del. Mar. 8, 1999).

In short, the one-year period of limitation began running on September 16, 1996, the day after Petitioner's conviction became final. His Petition was filed nearly five years later on September 11, 2001. 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).

#### **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, Petitioner pursued postconviction relief in the state courts by filing a motion for reduction of sentence

and a motion for postconviction relief. Respondents assert that Petitioner's motion for postconviction relief cannot toll the one-year period because it was filed after the one-year period expired.

An examination of the record confirms that more than one year lapsed before Petitioner filed his motion for postconviction relief. First, from September 15, 1996 (the date his conviction became final) through October 3, 1996, (the date he filed a motion to correct sentence), a period of 17 days lapsed during which no postconviction proceeding was pending. Those 17 days are counted toward the one-year period. The period of limitation began running again on December 13, 1996, thirty days after the Superior Court denied his motion for correction of sentence. See Swartz v. Meyers, 204 F.3d 417, 422 (3d Cir. 2000) (holding that a postconviction proceeding is "pending" under § 2244(d)(2) until the time to appeal expires).

One year and four months later, on April 7, 1998, Petitioner filed his motion for postconviction relief. By that time, however, the one-year period had expired. The Court thus agrees with Respondents that Petitioner's motion for postconviction relief has no effect on the timeliness inquiry in this matter. See Fisher v. Gibson, 262 F.3d 1135, 1142-43 (10th Cir. 2001) (stating that application for postconviction relief filed after the expiration of the one-year period has no tolling effect),

cert. denied, 122 S. Ct. 1789 (2002).

In short, the Court finds that more than one year lapsed during which no postconviction proceeding was pending. Accordingly, the Court concludes that the statutory tolling provision cannot render the Petition timely filed.

### **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) if 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 instant case, Petitioner has failed to articulate any extraordinary circumstances that prevented him from filing his

Petition with this Court in a timely manner. Indeed, he has failed to offer any explanation for the delay. The Court cannot find any extraordinary circumstances that warrant applying equitable tolling. Accordingly, the Court will dismiss the Petition as time barred.

**D. 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 Petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal 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, Petitioner'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 to render the petition timely. The Court is convinced that reasonable jurists would not debate otherwise. Petitioner, therefore, has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not issue.

### **III. CONCLUSION**

For the reasons discussed above, the Court will dismiss as untimely the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Ronald W. Trotman. The Court will not issue a certificate of appealability.

An appropriate Order will be entered.

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O R D E R

At Wilmington, this 17th day of June 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Ronald W. Trotman's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (D.I. 2) 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).

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE