

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

RICARDO MORENO,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-798-GMS
)	
THOMAS L. CARROLL, Warden, and)	
ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Petitioner Ricardo Moreno pleaded guilty but mentally ill to attempted murder and possession of a deadly weapon during the commission of a felony. He is currently serving a twenty-year sentence at the Delaware Correctional Center in Smyrna, Delaware. Moreno has now filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondents ask the court to dismiss the petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d). For the reasons that follow, the court will order each party to submit a supplemental memorandum addressing whether the one-year period should be equitably tolled due to Moreno’s mental incompetence.

I. BACKGROUND

On August 15, 1990, a grand jury in the Delaware Superior Court charged Moreno with one count of attempted murder in the second degree and one count of possession of a deadly weapon during the commission of a felony. Following a series of competency hearings, the

Superior Court determined on January 10, 1992, that Moreno was not competent to stand trial, and ordered that he be placed as an inpatient at the Delaware State Hospital. On May 20, 1993, the Superior Court again determined that Moreno was not yet competent to stand trial, and ordered his continued treatment at the State Hospital.

On April 12, 1995, the Superior Court determined that Moreno was competent to stand trial, and ordered that he remain at the State Hospital until trial. Moreno appeared before the Superior Court on September 26, 1995, and pleaded guilty but mentally ill to both charges. The Superior Court sentenced Moreno on December 1, 1995, to twenty years in prison followed by six months probation. Moreno did not appeal to the Delaware Supreme Court. On June 13, 1996, the Superior Court ordered Moreno transferred from the State Hospital to the custody of the Department of Correction, and ordered that his mental health treatment continue as needed.

On November 13, 2000, Moreno filed a motion for modification of sentence, which the Superior Court returned for failure of service. He then filed a petition for a writ of habeas corpus on December 4, 2000, which the Superior Court denied on December 5, 2000. On December 7, 2000, Moreno filed another motion for modification of sentence, which was denied on January 4, 2001. Moreno did not appeal to the Delaware Supreme Court from any of these orders.

Moreno then filed in the Superior Court his first motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court summarily dismissed the motion as time barred. *State v. Moreno*, No. 90007317DI, 2001 WL 112065 (Del. Super. Ct. Jan. 30, 2001). Moreno did not appeal to the Delaware Supreme Court. He filed his second motion for postconviction relief on March 21, 2001, which the Superior Court summarily dismissed as time barred. *State v. Moreno*, No. 90007317DI, 2001 WL 429212 (Del. Super. Ct.

Apr. 25, 2001). The Delaware Supreme Court affirmed. *Moreno v. State*, No. 239, 2001, 2001 WL 1388551 (Del. Oct. 31, 2001).

Moreno has now filed the current petition for federal habeas corpus relief. The respondents argue that the petition is subject to a one-year period of limitation that expired before Moreno filed it, and ask the court to dismiss it 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)).

Moreno's conviction became final before the AEDPA was enacted. As described above, his sentence was imposed on December 1, 1995. Although he did not file a direct appeal, the period of time 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, Moreno's conviction became final on December 31, 1995, thirty days after the Superior Court imposed his sentence, and well before the enactment of the AEDPA. *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 Moreno's habeas petition was filed on December 3, 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. *Burns*, 134 F.3d at 113. Moreno 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 November 19, 2001. In the absence of proof respecting the date of delivery, the court deems Moreno's petition filed on November 19, 2001, the date he signed it. *See Eley v. Snyder*, Civ. No. 00-34-GMS, 2002 WL 441325, *2 (D. Del. Mar 20, 2002).

Nonetheless, Moreno's habeas petition was filed four and one-half years after the April 23, 1997 deadline. That, however, does not necessarily require dismissal of the petition as untimely, because the one-year period of limitation is subject to equitable tolling. *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)).

Moreno has not expressly invoked the doctrine of equitable tolling, nor has he described why any extraordinary circumstances prevented him from filing a timely federal habeas petition. An examination of the record, however, indicates that Moreno’s mental competence was an issue of concern with the Superior Court. Indeed, the Superior Court declared Moreno incompetent to stand trial, and postponed his trial for several years. Even after Moreno was declared competent to stand trial and was sentenced, the Superior Court specifically ordered that he continue to receive mental health care as needed while in custody.

As the Third Circuit has explained, a habeas petitioner’s mental incompetence may

warrant equitable tolling of the one-year period of limitation, but only if his incompetence “somehow affected the petitioner’s ability to file a timely habeas petition.” *Nara v. Frank*, 264 F.3d 310, 320 (3d Cir. 2001). Mental incompetence, however, “is not a *per se* reason to toll a statute of limitations.” *Id.*

Here, Moreno does not allege specifically that mental incompetence prevented him from filing a federal habeas petition or a Rule 61 motion (for statutory tolling purposes) prior to April 23, 1997. He does not describe the nature of any mental illness or any limitations due to mental illness, nor does he explain how any such illness prevented him from pursuing postconviction remedies in a timely fashion. The sparse state court records before the court show that Moreno was transferred from the State Hospital on June 14, 1996. The record also shows a period of inactivity from that time until November 13, 2000, when Moreno filed a motion for modification of sentence in the Superior Court. Since November 13, 2000, Moreno has actively attempted to pursue postconviction remedies in the state courts and in this court.

Based on the sparse record, the court is simply unable to determine whether this four-and-one-half-year period of inactivity is related to Moreno’s mental incompetence. If Moreno’s mental incompetence prevented him from pursuing postconviction remedies during this period of inactivity, his mental incompetence may warrant equitable tolling of the one-year period of limitation. Unfortunately, neither of the parties has addressed this issue specifically.

Under these circumstances, the court is unwilling to dismiss Moreno’s federal habeas petition as untimely.¹ On the other hand, the court is unable to conclude that the one-year period should be equitably tolled due to Moreno’s mental incompetence. Accordingly, the court will

¹ The respondents offer no alternative basis for dismissing the petition.

order each party to submit a supplemental memorandum addressing whether the one-year period of limitation should be equitably tolled due to Moreno's mental incompetence during the relevant period of time, *i.e.*, before the April 23, 1997 deadline.

III. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Petitioner Ricardo Moreno shall file and serve a supplemental memorandum addressing whether the one-year period of limitation should be equitably tolled due to his mental incompetence. Moreno's memorandum must be filed and served not later than September 27, 2002.
2. Not later than October 21, 2002, the respondents shall file and serve a supplemental memorandum addressing equitable tolling of the one-year period of limitation due to Moreno's mental incompetence. On that date, the respondents shall also file and serve copies of any state court records necessary for the court to determine whether equitable tolling is warranted due to Moreno's mental incompetence. The respondents shall also provide the court with any alternative argument why the petition should not be granted.
3. After receiving and considering the parties' supplemental memoranda, the court will notify the parties if further submissions or proceedings are required.

IT IS SO ORDERED.

Dated: September 4, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE