

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MICHAEL WAYNE REED, :
 :
Petitioner, :
 :
v. : Civil Action No. 01-81-JJF
 :
ROBERT SNYDER, :
 :
Respondent. :
 :
 :

Michael Wayne Reed, Pro Se Petitioner.

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

MEMORANDUM OPINION

June 29, 2001

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (the "Petition") (D.I. 2) filed by Petitioner, Michael Wayne Reed. For the reasons set forth below, the Petition will be dismissed and the Writ of Habeas Corpus will be denied.

BACKGROUND

In October 1998, Petitioner pled guilty to one count of third degree unlawful sexual intercourse. The Delaware Superior Court sentenced Petitioner to ten years imprisonment, suspended for ten years of probation. Thereafter, the supervision of Petitioner's probation was transferred to California under 11 Del. C. § 4358. (B5).¹

While in California, Petitioner was convicted of rape in July 1990 and sentenced to three years imprisonment. (B5). As a result of his violation of probation, the Delaware Superior Court issued a capias in October 1990 for Petitioner's arrest. (B2, Docket Entry No. 13). On December 10, 1991, Petitioner was released on parole in California. (B21).

Petitioner was later arrested again in California and charged with one count of forcible rape and two counts of forcible oral copulation. (B6-10). Petitioner was convicted of

¹ References to "B" refer to the Appendix to the State's brief in Reed v. State, No. 321, 1997 (D. Del. Dec. 3, 1997).

rape and one count of forcible oral copulation. He was sentenced by a California judge on May 25, 1995 to three years in prison. (B11-23).

On June 23, 1995, California prison authorities informed Petitioner that Delaware authorities had filed a detainer in connection with Petitioner's violation of probation charge. (B24). Petitioner was subsequently extradited to Delaware. (B26-27).

On August 23, 1996, the Delaware Superior Court held a violation of probation hearing. The Delaware Superior Court found that Petitioner violated his probation and revoked the remaining term of his probation. The court then sentenced Petitioner to 9 ½ years imprisonment, followed by 6 months probation. (B45-49). Petitioner did not file a direct appeal of his probation revocation.

In September 1996, Petitioner moved for federal habeas relief. Thereafter, Petitioner voluntarily moved to dismiss his petition, and the Court dismissed the petition without prejudice. Reed v. Kearney, Civ. Act. No. 97-14-JJF (D. Del. Feb. 19, 1997).

On March 18, 1997, Petitioner filed a motion for state post-conviction relief in the Delaware Superior Court. On June 27, 1997, the Superior Court denied Petitioner's motion, and Petitioner appealed. On December 3, 1997, the Delaware Supreme Court affirmed the superior court's denial of Petitioner's motion. Reed v. State, No., 321, 1997 (Del. Dec. 3, 1997).

By his Petition dated January 25, 2001, Petitioner contends that his extradition to Delaware six years after a capias was issued for his arrest violated due process, his constitutional right to a speedy trial and the state probation statute. Petitioner also contends that he was denied counsel at his probation revocation hearing in Delaware. The State filed an Answer to the Petition, and therefore, this matter is ripe for the Court's review.

DISCUSSION

Before turning to the merits of Petitioner's claims, the Court must determine, as a threshold matter, whether the Petition is time barred under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Effective April 24, 1996, the AEDPA amended 28 U.S.C. § 2254 to impose a one year limitations period on the filing of federal habeas petitions. In pertinent part, Section § 2244(d) provides:

(d)(1) A 1-year period of limitations 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 limitations 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. . .

(2) 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 limitations under this subsection.

28 U.S.C. § 2244(d).

In the context of a Section 2254 petition, the Third Circuit has concluded that a judgment becomes "final" on the later of two dates: (1) the date on which the United States Supreme Court affirms the conviction and sentence on the merits or denies a timely petition for certiorari review; or (2) the date on which the time for filing a timely petition for certiorari review expires. Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999).

In this case, Petitioner did not appeal the Delaware Superior Court's decision revoking his probation. As a result, the AEDPA's one year limitations period began to run upon the expiration of the time for filing such an appeal. Henshaw v. Commissioner, Dep't of Correction, 2000 WL 777868, *3 (D. Del. June 8, 2000) (Robinson, J.). Under 10 Del. C. § 147, Petitioner had thirty days to file his appeal. Accordingly, Petitioner was required to file his appeal no later than September 23, 1996.²

Applying the one limitations period of the AEDPA from the expiration of the time in which Petitioner could have sought review of his probation revocation, Petitioner was required to file his federal Petition on September 23, 1997. However, the Petition in this case is dated January 25, 2001, and Petitioner provides no other proof regarding the date of mailing. Thus, the Petition is deemed filed on January 25, 2001. Johnson v.

² Because thirty days from the Superior Court's decision was Sunday, September 22, 1996, Petitioner had until Monday, September 23, 1996, to file his appeal.

Brewington-Carr, Civ. Act. No. 99-181-JJF, mem. op. at 4 (D. Del. Feb. 22, 2000) (absent proof of mailing, date on petition is deemed filing date). Because the Petition is deemed filed more than three years after the September 1997 filing deadline, the Court concludes that the Petition is time barred under Section 2244(d), unless the statute of limitations has been tolled pursuant to 28 U.S.C. §2244(d)(2).

Pursuant to 28 U.S.C. § 2244(d)(2), the one year statute of limitations imposed by 28 U.S.C. § 2244(d)(1) is tolled during the pendency of a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim. In this case, Petitioner filed a motion for state post-conviction relief on March 18, 1997, 174 days after the limitations period began to run. The Delaware Supreme Court decided Petitioner's appeal of the superior court's denial of post-conviction relief on December 3, 1997. Accordingly, the AEDPA's statute of limitations began to run again on December 3, 1997. Stokes v. District Attorney of the County of Philadelphia, 247 F.3d 539, 539 (3d Cir. 2001) (collecting cases and holding that ninety day period during which certiori application may be filed to appeal denial of state post-conviction relief does not toll one year statute of limitations); see also Ott v. Johnson, 192 F.3d 510, 512-513 (5th Cir. 1999); Rhine v. Boone, 182 F.3d 1153, 1155 (10th Cir. 1999) At that point, Petitioner had 191 days of the one year limitations period

remaining. Thus, Petitioner was required to file his federal habeas Petition by June 12, 1998. However, Petitioner did not file his federal habeas Petition until January 25, 2001, well-after the 1998 deadline, and therefore, the Court concludes that the Petition is time-barred under Section 2244(d). Accordingly, the Court will dismiss the Petition as untimely.

CONCLUSION

For the reasons discussed, the Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody filed by Petitioner, Michael Wayne Reed, will be dismissed and the Writ of Habeas Corpus will be denied.

An appropriate Order will be entered.

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 FOR THE DISTRICT OF DELAWARE

MICHAEL WAYNE REED,	:	
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Petitioner,	:	
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v.	:	Civil Action No. 01-81-JJF
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ROBERT SNYDER,	:	
	:	
Respondent.	:	
	:	
	:	

O R D E R

At Wilmington, this 29 day of June 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner, Michael Wayne Reed's, Petitioner Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus Filed By A Person In State Custody (D.I. 2) is DISMISSED, and the relief requested is DENIED.

2. Because the Court finds that Petitioner has failed to make a "substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253(c)(2), a certificate of appealability is DENIED.

UNITED STATES DISTRICT JUDGE