

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILLIP W. DOWNS, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 02-1385-JJF
 :
 THOMAS L. CARROLL, Warden, :
 :
 Respondent. :
 :

Phillip W. Downs, Pro Se Petitioner.

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

MEMORANDUM OPINION

February 25, 2003

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 Phillip W. Downs. For the reasons set forth below, the Court will dismiss the Petition as time-barred by the one-year limitations period set forth in 28 U.S.C. § 2244(d)(1).

BACKGROUND

In November 1998, Petitioner was indicted on multiple drug offenses. On January 26, 1999, Petitioner pled guilty to two counts of delivery of cocaine in violation of 16 Del. C. § 4751 and one count of possession with intent to deliver in violation of 16 Del. C. 4751. Petitioner was sentenced on the same day to thirty years imprisonment, suspended after ten years for twenty years of work release and probation. Petitioner did not file a direct appeal challenging his conviction or sentence in the Delaware Supreme Court.

On November 27, 2000, Petitioner filed an application for state post-conviction relief. In May 2001, a Superior Court Commissioner recommended that the motion be denied. On July 26, 2001, a Superior Court judge adopted the Commissioner's report and denied the motion. State v. Downs, 2001 WL 884154 (Del. Super. Jul. 26, 2001). Petitioner appealed the Superior Court's denial of his motion for post-conviction relief, and the Delaware Supreme Court dismissed the appeal as untimely under state law.

Downs v. State, 2001 WL 1751225 (Del. Oct. 15, 2001).

By his federal habeas Petition, Petitioner contends that his guilty plea was not voluntary and that he was denied effective assistance of counsel. Respondent has filed an answer to the Petition contending that it is time-barred under 28 U.S.C. § 2244(d). Accordingly, this matter is ripe for the Court's review.

DISCUSSION

I. 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).

Petitioner pled guilty and was sentenced on January 26, 1999. Petitioner did not file a direct appeal of his conviction

or sentence. Thus, the limitations period began to run upon the expiration of the time for filing such an appeal. Pursuant to 10 Del. C. § 147, Petitioner had thirty days in which to file his direct appeal or until February 25, 1999. Applying the one-year limitation period to this date, Petitioner was required to file his Petition on or before February 25, 2000.

In this case, the Petition is undated. However, the inmate financial statement attached to the Petition is dated June 18, 2002. Petitioner's Memorandum Of Law And Supporting Facts is dated July 18, 2002, and all of these documents are stamped by the Court as received on July 23, 2002. In these circumstances, the Court deems the Petition filed on June 18, 2002, the earliest date discernible from the record. Love v. Williams, 2002 WL 1058184, *2 (D. Del. May 22, 2002) (using date on in forma pauperis application to establish filing date where petition was undated) (citing Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999)). Because Petitioner filed his Petition more than two years after the expiration of the limitation period, the Court concludes that the Petition is time-barred, unless the statute of limitations has been statutorily or equitably tolled. See e.g. Gholdson v. Snyder, 2001 WL 657722, *3 (D. Del. May 9, 2001).

II. 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).

In this case, Petitioner filed a motion for post-conviction relief on November 27, 2000, approximately nine months after the filing deadline for his federal habeas petition. Because the federal limitations period had already expired, it could not be tolled by the filing of Petitioner's post-conviction motion. See Fisher v. Gibson, 262 F.3d 1135, 1142-43 (10th Cir. 2001) (stating that application for post-conviction relief filed after the expiration of the one-year period has no tolling effect), cert. denied, 122 S. Ct. 1789 (2002); Trotman v. Snyder, Civ. A. No. 01-653-JJF, 2002 WL 1348180, *2 (D. Del. June 17, 2002) (same). Accordingly, the Court concludes that the statutory tolling provision cannot render the Petition timely filed.

III. Equitable Tolling

Additionally, the one-year period of limitation 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). 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 fails to offer any explanation for his delay in filing. As such, the Court cannot find that extraordinary circumstances prevented Petitioner from asserting his rights, and therefore, the Court concludes that equitable tolling principles are inapplicable to the Petition. Accordingly, the Court will dismiss the Petition as time-barred.

IV. Certificate of Appealability

The Court must next 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 reasonable jurists 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, the Court has concluded that the Petition is barred by the one-year period of limitation and statutory and equitable tolling principles are inapplicable to the Petition. The Court is convinced that reasonable jurists would not debate otherwise. Because the Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, the Court declines to issue a certificate of appealability.

CONCLUSION

For the reasons discussed, the Court will dismiss the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Phillip W. Downs and deny the Writ of Habeas Corpus sought by Petitioner. In addition, 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 25th day of February 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Phillip W. Down'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 Writ Of Habeas Corpus is DENIED.
2. The Court declines to issue a certificate of appealability for failure to satisfy the standard under 28 U.S.C. § 2253(c) (2).

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE