

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMY MURPHY, :
 :
 Petitioner, :
 :
 v. : Civ. Act. No. 02-1602-JJF
 :
 THOMAS CARROLL, Warden, :
 :
 Respondent. :

Jimmy Murphy, pro se Petitioner.

Thomas E. Brown, Deputy Attorney General, Delaware Department of
Justice, Wilmington, Delaware. Attorney for Respondent.

MEMORANDUM OPINION

October 29, 2003

Wilmington, Delaware

Farnan, District Judge

I. INTRODUCTION

Petitioner Jimmy Murphy is a Delaware inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the Court is Petitioner's Petition for the Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, (D.I. 2.), a Motion for the Appointment of Counsel, (D.I. 16.), and a Motion for an Evidentiary Hearing. (D.I. 19.) For the reasons that follow, the Court will dismiss the Petition as time-barred and deny Petitioner's Motions.

II. BACKGROUND

Following a Delaware Superior Court jury trial in 1996, Petitioner was convicted of delivery of cocaine and maintaining a dwelling for keeping controlled substances. He was sentenced as an habitual offender to life in prison. Petitioner's conviction and sentence were affirmed on direct appeal. Murphy v. State, 694 A.2d 844 (Del. 1997).

On March 19, 1999, Petitioner filed in the Delaware Superior Court a Motion for Post-Conviction Relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. (D.I 13, Super. Ct. Crim. Dkt. Murphy v. State, No. 228, 2001 in Appendix to State's Op. Br. at B-1.) While the state Motion for Post-Conviction Relief was pending, Petitioner filed three Petitions for a Writ of Mandamus in the Delaware Supreme Court. (Id. at B-

2 to B-4.) All three Writs were dismissed. (Id.)

The Delaware Superior Court denied Petitioner's Motion for Post-Conviction Relief on April 24, 2001. State v. Murphy, IK95-09-0365 and 0366 (Del. Super. Ct. Apr. 24, 2001). The Delaware Supreme Court affirmed the Superior Court's Order on December 10, 2001. Murphy v. State, 788 A.2d 131 (Del. 2001).

Petitioner's § 2254 Petition is dated October 8, 2002, but he filed the Petition in this Court on November 11, 2002. (D.I. 2.) Petitioner challenges his conviction on the following grounds: (1) despite his allegations of ineffective assistance of counsel and his request to seek private counsel, the trial court forced Petitioner to proceed with his trial attorney, thereby constituting a conflict of interest and a violation of his Fourteenth Amendment rights; (2) the prosecutor and undercover agent violated Delaware's laws regarding the chain of custody, thereby violating Petitioner's Sixth and Fourteenth Amendment rights; (3) the Delaware Superior Court improperly denied Petitioner's Motion for Post-Conviction Relief because it did not hold an evidentiary hearing; and (4) the Delaware Supreme Court erred in failing to reverse and remand Petitioner's case to the Superior Court for an evidentiary hearing. (D.I. 2 at 5,6.) Respondent asks the Court to dismiss the Petition as time-barred under AEDPA because the one-year filing period expired before Petitioner filed his Petition. (D.I. 9.)

Petitioner's § 2254 Petition is now ripe for review.

III. DISCUSSION

A. One-Year Period of Limitation

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") prescribes a one-year period of limitation for the filing of habeas petitions by state prisoners. 28 U.S.C. § 2244(d)(1). The AEDPA states, in pertinent 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)(1). If a state prisoner appeals a state court judgment, the state court criminal judgment becomes final, and the statute of limitations begins to run, "at the conclusion of review in the United States Supreme Court or when the time for seeking certiorari review expires." See Kapral v. United States, 166 F.3d 565, 575, 578 (3d Cir. 1999); Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999).

In the present case, the Delaware Supreme Court affirmed Petitioner's convictions and sentences on May 30, 1997. Murphy v. State, 694 A.2d 844 (Del. 1997). Petitioner did not file a petition for a writ of certiorari with the United States Supreme Court. As a result, his judgment became final for the purposes

of § 2244(d) (1) upon the expiration of the ninety-day filing period for the writ of certiorari: August 28, 1997. See Kapral, 166 F.3d at 575, 578. Thus, to timely file a habeas petition with this Court, Petitioner needed to file his § 2254 Petition no later than August 28, 1998.

A pro se prisoner's habeas petition is considered filed on the date the petition is delivered to prison officials for mailing, not on the court's docket date. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Petitioner has not provided the Court with any documentation establishing the date he submitted the Petition to prison officials for mailing. Although Petitioner filed his pending § 2254 Petition on November 4, 2002, the Petition itself is dated October 8, 2002. (D.I. 2.) In the absence of proof regarding the delivery date to prison officials, the Court will treat the Petition as filed on October 8, 2002.

Even if the filing date is October 8, 2002, Petitioner filed his § 2254 Petition more than four years after his conviction became final. Nonetheless, if either the doctrine of statutory tolling or equitable tolling applies, then the Petition will not be time-barred. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999). The Court will discuss each doctrine in turn.

B. Statutory Tolling

Section 2244(d) (2) of the AEDPA specifically permits the statutory tolling of the one-year period of limitations:

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 should not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(2). The Third Circuit views a properly filed application for State post-conviction review as "one submitted according to the state's procedural requirements, such as the rules governing the time and place of filing." Lovasz v. Vaughn, 134 F.3d 146, 148 (3d Cir. 1998). A post-conviction motion filed after the expiration of the one-year filing period does not toll the limitations period. Price v. Taylor, 2002 WL 31107363, at *2 (D. Del. Sept. 23, 2002).

In the present case, Petitioner filed his Motion for Post-Conviction Relief on March 19, 1999, approximately six months after the expiration of AEDPA's one-year limitations period. Consequently, the Court concludes that Petitioner's Motion for Post-Conviction Relief does not toll the one-year filing period.

C. Equitable Tolling

A petitioner may also avoid the AEDPA one-year time period by demonstrating that the doctrine of equitable tolling applies to the habeas petition. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 122 S.Ct. 323 (2001); Miller v. New Jersey State Dep't of Corrs., 145 F.3d 616 (3d Cir. 1998). Equitable tolling is proper when "the petitioner has in some extraordinary way . . . been prevented from asserting his or her rights." Id.

at 618 (internal citations omitted). The Third Circuit permits equitable tolling for habeas petitions in only four narrow circumstances:

- (1) where the defendant actively misled the plaintiff;
- (2) where the plaintiff was in some extraordinary way prevented from asserting his rights;
- (3) where the plaintiff timely asserted his rights mistakenly in the wrong forum; or
- (4) where [in a Title VII action] the claimant received inadequate notice of his right to file suit, a motion for appointment of counsel is pending, or the court misled the plaintiff into believing that he had done everything required of him.

Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999).

Federal courts invoke the doctrine of equitable tolling "only sparingly." See United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998). In order to trigger equitable tolling, the petitioner must demonstrate that he "exercised reasonable diligence in investigating and bringing [the] claims"; mere excusable neglect is insufficient. Miller, 145 F.3d at 618-19 (citations omitted). For example, in non-capital cases, inadequate research, attorney error, miscalculation, or other mistakes do not qualify as "extraordinary circumstances" sufficient to trigger equitable tolling. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001). Generally, "a statute of limitations should be tolled only in the rare situation where equitable tolling is demanded by sound legal principles as well as the interests of justice." Jones, 195 F.3d at 159 (quoting Midgley, 142 F.3d at 179).

Here, Petitioner filed an "Amended Supplemental Reply" asserting two reasons for equitably tolling the one-year filing period. (D.I. 14.) First, Petitioner states that extensive filing delays related to pro se habeas petitions are due to a prisoner's inability to "gain trial records, exhibits and other related documents to substantiate their claims before a court of review." Id. at 3, 4 (citing Deputy v. Taylor, 19 F.3d 1485, 1490 (3d Cir. 1994) and Dorman v. Wainwright, 798 F.2d 1358, 1370 (11th Cir. 1986)). In essence, Petitioner's argument is that incarceration in and of itself constitutes an extraordinary circumstance justifying equitable tolling. The fact that a person is incarcerated does not constitute an extraordinary circumstance sufficient to trigger equitable tolling. See Bell v. Snyder, 2002 WL 1446947, at *4 (D. Del. June 4, 2002) (holding that incarceration in another state is not an extraordinary circumstance justifying equitable tolling).

Petitioner's second argument is that the Court should not focus on "when [the habeas petition] was actually filed, but whether the petitioner exercised 'due diligence' in filing . . . the petition with[in] a reasonable time after he became aware of the grounds for relief." (D.I. 14 at 3.) Unfortunately, due diligence alone is not a basis for relief absent some showing that Petitioner's effort to file was affected by some influence beyond Petitioner's control. Accordingly, the Court concludes

that the doctrine of equitable tolling is not available to Petitioner on the facts he has presented, and therefore, Petitioner's § 2254 Petition will be dismissed as untimely.

D. Motion for the Appointment of Counsel

Petitioner asks the Court to appoint counsel pursuant to 18 U.S.C. §3006A. (D.I. 16.) He asserts that counsel should be appointed because he is indigent, he has no legal training, and he is unable to investigate his claims. Id.

It is well settled that Petitioner does not have a Sixth Amendment right to counsel in this habeas proceeding. See Pennsylvania v. Finley, 481 U.S. 551, 555 (1987); United States v. Roberson, 194 F.3d 408, 415 n. 5 (3d Cir. 1999). However, a district court may appoint counsel to represent an indigent habeas petitioner "if the interest of justice so requires." Rule 8(c), 28 U.S.C. fol. § 2254. As explained above, the Court is dismissing Petitioner's § 2254 Petition as time-barred. In these circumstances, the "interests of justice" do not require the appointment of counsel, See 18 U.S.C. § 3006A(a)(2)(B), and therefore, the Court will deny Petitioner's Motion for the Appointment of Counsel.

E. Motion for an Evidentiary Hearing

Petitioner asserts that he is entitled to an evidentiary hearing because the "trial court err[ed] and abused its discretion by failing to secure a factual finding on record of

the defendant's ineffective assistance of counsel claim before appointing substitute counsel." (D.I. 19.) Although a federal court has discretion to grant evidentiary hearings, the AEDPA permits such hearings only in limited circumstances. See 28 U.S.C. § 2254(e); Campbell v. Vaughn, 209 F.3d 280, 286-87 (3d. Cir. 2000). When deciding whether to grant an evidentiary hearing, courts "focus on whether a new evidentiary hearing would be meaningful, in that a new hearing would have the potential to advance the petitioner's claim." Id. at 287. A petitioner needs to explain how the evidentiary hearing will advance the habeas claim, or "'forecast any evidence beyond that already contained in the record' that [will] help his cause." Id. (quoting Cardwell v. Greene, 152 F.3d 331, 338 (4th Cir. 1998)).

In the present case, Petitioner's § 2254 Petition is time-barred. The Court is thus precluded from reviewing the merits of Petitioner's ineffective assistance of counsel claim. Moreover, Petitioner does not assert how an evidentiary hearing would affect the Court's decision that the Petition is time-barred. Accordingly, the Court will dismiss Petitioner's Motion for an Evidentiary Hearing.

IV. CERTIFICATE OF APPEALABILITY

Finally, the Court must decide whether to issue a Certificate of Appealability. See Third Circuit Local Appellate Rule 22.2. A Certificate of Appealability may only be issued

when a petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner establishes a "substantial showing" by demonstrating "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Additionally, when a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the court is not required to issue a certificate of appealability unless the petitioner demonstrates 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. Id. "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 these reasons, the Court concludes that reasonable jurists would not find the Court's conclusion that Petitioner's § 2254 Petition is time-barred to be unreasonable. Consequently, the Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, and the Court declines to issue a Certificate of Appealability.

V. CONCLUSION

For the reasons discussed, the Court concludes that Petitioner's § 2254 Petition is time-barred. The Court also concludes that Petitioner's Motion for the Appointment of Counsel and his Motion for an Evidentiary Hearing should be dismissed. Furthermore, the Court finds no basis for the issuance of a Certificate of Appealability. An appropriate Order shall issue.

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ORDER

For the reasons set forth in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED that:

1. Petitioner Jimmy Murphy's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (D.I. 2.) is DISMISSED.
2. Petitioner's Motion for the Appointment of Counsel (D.I. 16.) is DENIED.
3. Petitioner's Motion for an Evidentiary Hearing (D.I. 19.) is DENIED.
4. The Court declines to issue a Certificate of Appealability.

Dated: October 29, 2003

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE