

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DERRICK R. WILLIAMS, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 02-18-JJF
 :
 STANLEY TAYLOR, Commissioner, :
 and M. JANE BRADY, :
 Attorney General of the :
 State of Delaware, :
 :
 Respondents. :
 :

Darryl K. Fountain, Esquire, Wilmington, Delaware.
Attorney for Petitioner.

Elizabeth Roberts McFarlan, Esquire of THE STATE OF DELAWARE
DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Respondents.

MEMORANDUM OPINION

July 3, 2002

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is a Petition for Habeas Corpus (D.I. 1) filed on behalf of Petitioner Derrick R. Williams. 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 March 16, 1992, a grand jury in the Delaware Superior Court charged Petitioner with trafficking in cocaine, possession with intent to deliver cocaine, and using a vehicle for keeping controlled substances. While released on bail awaiting trial, Petitioner fled to his native land of Jamaica. Eventually he was apprehended and returned to Delaware, where a Superior Court jury found him guilty as charged. The Superior Court sentenced Petitioner on May 3, 1996, to fifteen and one-half years in prison, followed by three years of decreasing levels of supervision. The Delaware Supreme Court affirmed Petitioner's conviction and sentence. Williams v. State, No. 206, 1996, 1996 WL 637908 (Del. Oct. 29, 1996). Petitioner is currently serving his sentence at the Delaware Correctional Center in Smyrna, Delaware.

On November 21, 2000, Petitioner filed in the Superior Court a petition for a writ of habeas corpus, which the Superior Court denied the next day. On December 6, 2000, Petitioner filed a motion for postconviction relief pursuant to Rule 61 of the

Superior Court Rules of Criminal Procedure. The Superior Court denied the motion as untimely and procedurally barred. State v. Williams, No. 92001939 (Del. Super. Ct. May 30, 2001). The Delaware Supreme Court affirmed for the same reasons. Williams v. State, No. 299, 2001, 2001 WL 1334791 (Del. Oct. 25, 2001).

Through counsel, Petitioner filed the current Petition seeking federal habeas corpus relief. He alleges that: (1) he was denied his rights as a Jamaican national under Article 36 of the Vienna Convention;¹ (2) trial counsel rendered ineffective assistance by failing to assert his rights under the Vienna Convention; and (3) the Superior Court erred in denying postconviction relief. 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 it 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

¹ See Vienna Convention on Consular Relations, 21 U.S.T. 77 (Apr. 24, 1963). Claims for federal habeas relief based on violations of the Vienna Convention are subject to the procedural requirements of the federal habeas statute. See Breard v. Greene, 523 U.S. 371, 376 (1998).

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, the Delaware Supreme Court affirmed Petitioner's conviction and sentence on October 29, 1996. Petitioner was then allowed ninety days in which to file a petition for a writ of certiorari with the United States Supreme Court. See Sup. Ct. R. 13.1. Although Petitioner did not seek review from the United States Supreme Court, the ninety-day period in which he could have filed such a petition is encompassed within the meaning of "the expiration of the time for seeking [direct] review," as provided in § 2244(d) (1) (A). See Kapral v. United States, 166 F.3d 565, 576 (3d Cir. 1999) (holding that on direct review, the limitation period begins to run at the expiration of the time for seeking review in the United States Supreme Court). Therefore, Petitioner's conviction became final on January 27, 1997, ninety days after the Delaware Supreme Court affirmed his sentence. The Court's docket reflects that

Petitioner filed the current Petition on January 4, 2002.² (D.I. 1.)

In short, the one-year period of limitation began running on January 28, 1997, the day after Petitioner's conviction became final. His Petition was filed nearly five years later on January 4, 2002. That, however, does not necessarily require dismissal of the Petition as untimely, 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 filed a state habeas petition on November 21, 2000, and a motion for postconviction relief on December 6, 2000. The one-year period, however, expired in January 1998. Because the state habeas petition and the motion for postconviction relief were filed after the one-year period

² Because Petitioner is represented by counsel, he cannot benefit from the holding of Burns v. Morton, 134 F.3d 109 (3d Cir. 1998). Under Burns, a "pro se prisoner's habeas petition is deemed filed at the moment he delivers it to prison officials for mailing to the district court." Id. at 113.

had expired, neither has any tolling effect in this matter.³ 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); Trotman v. Snyder, Civ. A. No. 01-653-JJF, 2002 WL 1348180, *2 (D. Del. June 17, 2002) (same).

In short, the Court finds that more than one year lapsed before Petitioner filed any application for postconviction relief in the Superior Court. Accordingly, the Court concludes that the statutory tolling provision does not apply.

C. Equitable Tolling

Additionally, the one-year period of limitation is not jurisdictional and 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). 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.

³ The Court need not decide whether either of Petitioner's postconviction filings constitutes "a properly filed application" under § 2244(d)(2). Because each was filed after the one-year period expired, the statutory tolling provision does not apply.

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 asserts that he did not know of his rights under the Vienna Convention until years after his conviction, and that his trial attorney should have advised him of these rights. (D.I. 1, ¶¶ 18-19.) Unfortunately for Petitioner, his lack of legal knowledge does not constitute an extraordinary circumstance warranting equitable tolling. See Delaney v. Matesanz, 264 F.3d 7, 15 (1st Cir. 2001); Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000), cert. denied, 531 U.S. 1194 (2001); United States v. Cicero, 214 F.3d 199, 203 (D.C. Cir. 2000); Felder v. Johnson, 204 F.3d 168, 171 (5th Cir.), cert. denied, 531 U.S. 1035 (2000). Likewise, in non-capital cases, "attorney error, miscalculation, inadequate research, or other mistakes" do not constitute the extraordinary circumstances required for equitable tolling. Fahy, 240 F.3d at 244.

In short, the Court cannot find that any extraordinary circumstances prevented Petitioner from filing his Petition with

this Court in a timely manner. For this reason, the Court concludes that the doctrine of equitable tolling does not apply. 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. Neither the statutory tolling provision nor the doctrine of equitable tolling applies. 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 for Habeas Corpus filed on behalf of Petitioner Derrick R. Williams. 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 3rd day of July 2002, for the reasons
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Derrick R. Williams' Petition for Habeas
Corpus (D.I. 1) 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