

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WAYNE C. THOMAS, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 02-240-JJF
 :
 THOMAS CARROLL, Warden, and :
 ATTORNEY GENERAL OF THE :
 STATE OF DELAWARE, :
 :
 Respondents. :
 :

Wayne C. Thomas, Pro Se Petitioner.

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

MEMORANDUM OPINION

July 30, 2002

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 Wayne C. Thomas. Also pending in this matter are Petitioner's motions for appointment of counsel. (D.I. 4, 7, and 14.) 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). The Court will deny as moot Petitioner's motions for appointment of counsel.

I. BACKGROUND

On March 14, 1997, Petitioner pleaded guilty in the Delaware Superior Court to robbery, attempted robbery, possession of a firearm during the commission of a felony, possession of cocaine, and assault. The Superior Court sentenced Petitioner that same day to eight years in prison followed by a period of probation. Petitioner did not file a direct appeal with the Delaware Supreme Court. He is currently serving his sentence at the Delaware Correctional Center in Smyrna, Delaware.

On June 17, 1997, Petitioner moved for a reduction of sentence, which the Superior Court denied on August 12, 1997. On April 27, 1999, Petitioner filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court denied the

Rule 61 motion. State v. Thomas, No. 9512012402, 2000 WL 708992 (Del. Super. Ct. Mar. 23, 2000). After remanding for an evidentiary hearing, the Delaware Supreme Court affirmed. Thomas v. State, No. 152, 2000, 2001 WL 760860 (Del. May 17, 2001).

Petitioner has now filed with the Court the current Petition seeking federal habeas corpus relief. (D.I. 2.) 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 the Petition 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 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, Petitioner's sentence was imposed on March 14, 1997. Although Petitioner 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, Petitioner's conviction became final on April 13, 1997, thirty days after the Superior Court imposed his sentence. 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 the current Petition was filed on April 3, 2002. (D.I. 2.) A pro se prisoner's habeas petition, however, is deemed filed on the date he delivers it to prison officials for mailing to the district court, not on the date the district court docket it. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Petitioner 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 March 4, 2002. In the absence of proof respecting the date of delivery, the Court deems the Petition filed on March 4, 2002, the earliest possible date he could have delivered it to prison officials for mailing. See Murphy v. Snyder, Civ. A. No. 98-415-JJF, at 4 (D. Del. Mar. 8, 1999).

In short, the one-year period of limitation began running on April 14, 1997, the day after Petitioner's conviction became final. His Petition was filed nearly five years later on March 4, 2002. That, however, does not necessarily require dismissal of the Petition as untimely, because the one-year period is subject to statutory and equitable tolling. 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 pursued postconviction relief in the state courts by filing a motion for reduction of sentence and a motion for postconviction relief. Respondents assert that

Petitioner's motion for postconviction relief cannot toll the one-year period because it was filed after the one-year period expired.

An examination of the record confirms that more than one year lapsed before Petitioner filed his motion for postconviction relief. First, from April 14, 1997, (the day after his conviction became final) through June 17, 1997, (the date he filed a motion for reduction of sentence), a period of 63 days lapsed during which no postconviction proceeding was pending. Those 63 days are counted toward the one-year period. The period of limitation began running again on September 12, 1997, thirty days after the Superior Court denied his motion for reduction of sentence.¹ See Swartz v. Meyers, 204 F.3d 417, 422 (3d Cir. 2000) (holding that a postconviction proceeding is "pending" under § 2244(d)(2) until the time to appeal expires).

One year and seven months later, on April 27, 1999, Petitioner filed his motion for postconviction relief. By that time, however, the one-year period had expired. The Court thus finds that Petitioner's motion for postconviction relief has no

¹ The Court's analysis assumes without deciding that Petitioner's motion for reduction of sentence qualifies as an "application for State post-conviction or other collateral review" under § 2244(d)(2). Such a determination is unnecessary in this case because the Petition is untimely even if the one-year period was tolled while Petitioner's motion for reduction of sentence was pending.

effect on the timeliness inquiry in this matter.² 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 during which no postconviction proceedings were pending. The Court thus concludes that the statutory tolling provision cannot render the Petition timely filed.

C. 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.

² The record indicates that on February 16, 1999, Petitioner filed a motion for appointment of counsel for the purpose of filing a Rule 61 motion, which the Superior Court denied on February 18, 1999. Even if the Court deemed Petitioner's motion for appointment of counsel filed on February 16, 1999, as a motion for postconviction relief, it was still filed after the one-year period expired.

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 is poorly educated, lacks legal training, and suffers from a mental illness. (D.I. 14.) He also alleges that his former attorney advised him to file a federal habeas petition at the conclusion of his state postconviction proceedings. (Id.)

To the extent that Petitioner attempts to invoke equitable tolling due to his lack of education and training, the Court is not persuaded. Several courts of appeals have held that an incarcerated pro se petitioner's lack of education or legal knowledge does not constitute an extraordinary circumstance warranting equitable tolling of the one-year period of limitation. 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). The Court agrees with these courts, and will not equitably toll the one-

year period due to Petitioner's lack of education and legal knowledge.

Respecting Petitioner's allegation of mental illness, the Third Circuit has explained that a habeas petitioner's mental incompetence may warrant equitable tolling only if his incompetence "somehow affected the petitioner's ability to file a timely habeas petition." Nara, 264 F.3d at 320. Mental incompetence "is not a per se reason to toll a statute of limitations." Id. Here, Petitioner alleges only that his "psychological situation prohibits [him] to certain limits." (D.I. 14.) He does not describe the nature of any mental illness or any limitations due to his mental illness, nor does he explain how any such illness prevented him from pursuing postconviction remedies in a timely fashion. In short, the Court is unable to find any evidence of record suggesting that mental incompetence prevented Petitioner from seeking federal habeas relief within the one-year period of limitation.

Petitioner's final equitable tolling argument is that his former attorney advised him to file a federal habeas petition at the conclusion of his state postconviction proceedings. (D.I. 14.) Even if true, this allegation does not warrant applying equitable tolling. Nothing in any of Petitioner's submissions suggests that former counsel somehow prevented him from pursuing federal habeas relief in a timely fashion.

In sum, the Court can find no extraordinary circumstances that warrant applying equitable tolling. Accordingly, the Court will dismiss the Petition as time barred.

D. Motions for Appointment of Counsel

As noted above, Petitioner has filed three motions for appointment of counsel. (D.I. 4, 7, 14.) It is well established that Petitioner has no 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). A district court, however, may appoint counsel to represent an indigent habeas petitioner "if the interest of justice so requires." Rule 8(c) of the Rules Governing Section 2254 Cases.

For the reasons stated, the Court has determined that the Petition is time barred. Accordingly, his motions for appointment of counsel will be denied as moot.

E. 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. 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 Writ of Habeas Corpus filed by Petitioner Wayne C. Thomas, and will deny as moot his motions for appointment of counsel. 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 30th day of July 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Wayne C. Thomas' 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 relief requested therein is DENIED.
2. Petitioner's motions for appointment of counsel (D.I. 4, 7, and 14) are DENIED as moot.
3. 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