

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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| DARNELL E. HARRIS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 02-357-GMS |
| |) | |
| THOMAS L. CARROLL, Warden, and |) | |
| ATTORNEY GENERAL OF THE |) | |
| STATE OF DELAWARE, |) | |
| |) | |
| Respondents. |) | |
| |) | |

MEMORANDUM AND ORDER

Following a jury trial in the Delaware Superior Court, Darnell E. Harris was convicted of second degree murder, possession of a deadly weapon during the commission of a felony, conspiracy, riot, and reckless endangering. He is presently incarcerated at the Delaware Correctional Center in Smyrna, Delaware, serving a sentence of ninety-two years. Harris has filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. As explained below, the court will dismiss Harris’ petition as time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2244(d)(1).

I. BACKGROUND

On February 14, 1996, a jury in the Delaware Superior Court found Darnell E. Harris guilty of murder in the second degree, reckless endangering, riot, three counts of possession of a deadly weapon during the commission of a felony, and two counts of conspiracy. The Superior Court sentenced Harris on March 29, 1996, to ninety-two years imprisonment. The Delaware

Supreme Court affirmed Harris' conviction and sentence on June 2, 1997. *Harris v. State*, 695 A.2d 34 (Del. 1997). Harris did not seek review from the United States Supreme Court.

On June 9, 2000, Harris 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 postconviction relief on October 2, 2000. *State v. Harris*, Cr. A. No. 9407002626 (Del. Super. Ct. Oct. 2, 2000). The Delaware Supreme Court affirmed the Superior Court's order. *Harris v. State*, No. 502, 2000, 2001 WL 433459 (Del. Apr. 25, 2001).

Harris has now filed the current petition for federal habeas corpus relief, challenging his convictions on the following grounds: (1) his convictions for three counts of possession of a firearm during the commission of a felony constitute double jeopardy; (2) his convictions for two counts of conspiracy constitute double jeopardy; (3) his convictions were obtained by an erroneous instruction to the jury respecting accomplice liability; and (4) trial counsel rendered ineffective assistance in several respects. (D.I. 1, ¶ 12; D.I. 2.) The respondents argue that the petition is subject to a one-year period of limitation that expired before Harris filed it, and ask the court to dismiss it.

II. DISCUSSION

A. One-Year Period of Limitation

In the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Congress imposed 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 in relevant 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).

In the matter at hand, the Delaware Supreme Court affirmed Harris' conviction and sentence on direct appeal on June 2, 1997. Harris was then allowed ninety days in which to file a petition for a writ of certiorari with the United States Supreme Court. *See* United States Supreme Court Rule 13.1. Although Harris 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 conclusion of direct review or the expiration of the time for seeking such review," as set forth 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 of § 2244(d)(1)(A) begins to run at the expiration of the time for seeking review in the United States Supreme Court). Therefore, Harris' conviction became final on September 2, 1997.¹

According to the court's docket, Harris filed his habeas petition on May 10, 2002. (D.I. 1.) A pro se prisoner's habeas petition, however, is considered filed on the date he delivers it to prison officials for mailing to the district court, not on the date the court docket it. *Burns v. Morton*, 134 F.3d 109, 113 (3d Cir. 1998). Harris has not provided the court with any documentation establishing the date he submitted his petition to prison officials for mailing. The

¹ The ninety-day period expired on Sunday, August 31, 1997. The following day, September 1, 1997, was Labor Day, a federal legal holiday. Accordingly, the time for filing a petition for a writ of certiorari was extended until Tuesday, September 2, 1997. *See* United States Supreme Court Rule 30.1.

petition itself, however, is dated April 22, 2002. (D.I. 1.) In the absence of proof respecting the date of delivery, the court deems Harris' habeas petition filed on April 22, 2002.

As the foregoing demonstrates, Harris' habeas petition was filed four and one-half years after his conviction became final. 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).

Here, Harris filed a motion for postconviction relief in the Superior Court on June 9, 2000. The one-year period of limitation, however, expired on September 2, 1998. Harris' motion for postconviction relief, filed long after the one-year period expired, has no tolling effect in this matter. *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); *Simpson v. Snyder*, Civ. A. No. 00-737-GMS, 2002 WL 1000094, *3 (D. Del. May 14, 2002)(same). To the extent that Harris believes that the one-year period began running at the conclusion of his postconviction proceedings, he is mistaken. (D.I. 2 at 10, 14, 16.) The AEDPA imposes a one-year period of limitation that commences from "the date on which the judgment became final." 28 U.S.C. § 2244(d)(1). By its own terms, the statutory tolling provision excludes from the one-year period any 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.” 28 U.S.C. § 2244(d)(2). Nothing in the statute suggests that the filing of a motion for postconviction relief revives a previously-expired period of limitation.

In sum, more than one year lapsed before Harris filed his application for postconviction relief. The court thus concludes that the statutory tolling provision does not apply.

C. Equitable Tolling

The one-year period of limitation is not jurisdictional and is subject to equitable tolling. *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). According to the Third Circuit, 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.

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)).

The court has searched the record in an effort to discern why Harris failed to file his habeas petition within the one-year period of limitation. Despite the respondents’ request to dismiss the petition as untimely, Harris has not explained why he waited until April 22, 2002, to

file his federal habeas petition. Based on its independent review of the record, the court cannot find that any extraordinary circumstances prevented Harris from complying with the one-year period of limitation. To the extent that Harris may have relied on an erroneous interpretation of the habeas statute, his unfamiliarity with federal habeas filing requirements does not excuse his failure to comply with 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); *Simpson*, 2002 WL 1000094 at *3.

For these reasons, the court finds that the doctrine of equitable tolling does not apply. The court will dismiss Harris' habeas petition as untimely.

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 the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When the court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, 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.*

As explained above, Harris’ federal 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 persuaded that reasonable jurists would not debate the correctness of these conclusions. Harris has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

III. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Darnell E. Harris’ petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (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).

IT IS SO ORDERED.

Dated: October 18, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE