

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT E. EATON, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 02-557-JJF
 :
 THOMAS CARROLL, Warden, :
 :
 Respondent. :
 :

Robert E. Eaton, Pro Se Petitioner.

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

MEMORANDUM OPINION

February 13, 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 Robert E. Eaton. 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).

BACKGROUND

In January 1996, Petitioner was indicted on charges of second degree assault in connection with the November 1995 assault of a female. In June 1996, the grand jury returned a superseding indictment, charging Petitioner with the assault and three counts of non-compliance with conditions of his bond in violation of 11 Del. C. § 2113. A jury trial was held in the Delaware Superior Court in July 1996, and Petitioner was convicted of one count of violating 11 Del. C. § 2113 and acquitted on the remaining charges. Petitioner appealed, and the Delaware Supreme Court affirmed his conviction. Eaton v. State, 703 A.2d 637 (Del. 1997).¹

¹ In July 1998, Petitioner was convicted of several offenses as the result of a second assault on a female. However, it appears to the Court, that these convictions are not the subject of Petitioner's instant federal habeas Petition. Accordingly, the Court will not consider the July 1998 convictions or Petitioner's subsequent post-conviction motions related to those convictions in the context of the instant Petition. 28 U.S.C. § 2244(d)(2) (properly filed post-conviction application or application for other collateral review must be "with respect to the pertinent judgment or claim" for tolling to apply); see Sweger v. Chesney, 294 F.3d 506, 518 (3d Cir. 2002)

On May 31, 2001, Petitioner filed a motion for post-conviction relief on May 31, 2001, challenging his conviction under 11 Del. C. § 2113 (c). On May 1, 2002, a Superior Court Commissioner recommended that the motion be denied, and a Superior Court judge adopted the recommendation on June 3, 2002. Petitioner did not appeal the denial to the Delaware Supreme Court.

By his federal habeas Petition, Petitioner challenges his conviction under 11 Del. C. § 2113 (c) and raises three claims for relief: (1) he was wrongly convicted of the bail offense, because he was acquitted of the underlying felony; (2) the prosecution witnesses gave false testimony; and (3) his trial and appellate counsel were constitutionally ineffective. In his Answer Brief, Respondent contends that the Petition 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

(recognizing that tolling only applies to properly filed post-conviction application which challenges the same judgment of conviction that is being contested in the federal habeas proceeding).

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's conviction for a violation of Section 2113(c) was affirmed by the Delaware Supreme Court on December 8, 1997. Where, as here, a petitioner has not filed a petition for certiorari before the United States Supreme Court, the judgment of conviction becomes final "on the date on which the petitioner's time for filing a timely petition for certiorari review expires." Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999). Accordingly, Petitioner's conviction became final on March 9, 1998, 90 days from December 8, 1997.² U.S. Supr. Ct. R. 13.1. Applying the one-year limitation period from this date, Petitioner was required to file his Petition on or before March

² Because the ninetieth day was March 8, 1998, a Sunday, Supreme Court Rule 30.1 permits the petition to be filed on the next business day, i.e. March 9, 1998.

9, 1999.

The Court's docket reflects that the current Petition was received by the Court and docketed on June 20, 2002. (D.I. 2.) However, a pro se prisoner's habeas petition is not deemed filed on the date the district court docketed it. Rather, a petition is deemed filed on the date it is delivered to prison officials for mailing to the court. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Petitioner does not indicate the date on which the Petition was delivered to prison authorities for mailing. However, absent proof of mailing, this Court has held that the date of the signatures within the petition is the date on which the petition is deemed filed. See Murphy v. Snyder, Civ. A. No. 98-415-JJF, at 4 (D. Del. Mar. 8, 1999).

In this case, the Petition and the accompanying Memorandum Of Law And Supporting Facts (D.I. 2) are dated June 21, 2002, which is well past the March 1999 filing deadline.³ Accordingly, the Court concludes that the Petition is time barred under Section 2244(d), unless the limitation period has been statutorily or equitably tolled. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999).

³ The Court observes that Petitioner must have post-dated his Petition, because it is dated June 21, 2002, but it was received by the Court on June 20, 2002. However, even if the Court uses the earlier date of June 20, 2002 as the date of filing, the Petition is still time-barred.

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 challenging his Section 2113 conviction in the Delaware Superior Court on May 31, 2001, more than two years after the filing deadline for his federal habeas petition. Because the federal limitation 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 allege any extraordinary circumstances giving rise to equitable tolling. Indeed, Petitioner has failed to offer any explanation for his delay in filing. 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. 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 Robert E. Eaton 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.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT E. EATON, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 02-557-JJF
 :
 THOMAS CARROLL, Warden, :
 :
 Respondent. :
 :

ORDER

At Wilmington, this 13th day of February 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Robert E. Eaton's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (D.I. 1) 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