

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

JAMES A. WILSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 03-1121-GMS
	)	
RICK KEARNEY,	)	
Warden,	)	
	)	
Respondent.	)	

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James A. Wilson, *pro se* petitioner.

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

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**MEMORANDUM OPINION**

April 29, 2005  
Wilmington, Delaware



SLEET, District Judge

## I. INTRODUCTION

Petitioner James A. Wilson is a Delaware inmate in custody at the Sussex Correctional Institution in Georgetown, Delaware. Currently before the court is Wilson's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 1.) For the reasons that follow, the court concludes that Wilson's petition is time-barred by the one-year period of limitations prescribed in 28 U.S.C. § 2244(d)(1).

## II. FACTUAL AND PROCEDURAL BACKGROUND

On July 18, 2000, Wilson pled guilty in the Delaware Superior Court to possession of a firearm by a person prohibited (11 Del. C. Ann. § 1448) and harassment (11 Del. C. Ann. § 1131(a)(1)) as a lesser included offense of committing an act of intimidation (11 Del. C. Ann. § 3532). (D.I. 1 at 2; D.I. 10 .) Wilson did not file a direct appeal in connection with his conviction.

On January 24, 2003, Wilson filed a motion for state post-conviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure ("Rule 61 motion"). Wilson's Rule 61 motion asserted that counsel provided ineffective assistance by failing to suppress the affidavit of probable cause and evidence, and also by failing to timely file for return of property. Wilson also asserted an illegal search and seizure claim under the Fourth Amendment. *State v. Wilson*, IK99-12-0459 thru 0460 R1, Com. R & R (Del. Super. Ct. July 18, 2003). The Superior Court adopted a Commissioner's Report and Recommendation denying Wilson's Rule 61 motion. *Id.*; (D.I. 9, Del. Super. Ct. Crim. Dkt. for *State v. Wilson*, IDNo. PK99120459R1 and IK99120460R1, D. No. 30.) Wilson did not appeal this decision.

Presently before the court is Wilson's *pro se* petition for federal habeas relief, asserting two claims for relief: (1) counsel provided ineffective assistance by failing to suppress the affidavit of probable cause, by failing to suppress evidence, and by failing to timely file for the return of property; and (2) an illegal search and seizure occurred in violation of the Fourth Amendment. *Id.* at ¶12(A), (B).

The State contends that Wilson's Fourth Amendment claim does not allege a basis for federal habeas relief, and that the entire petition is time-barred. (D.I. 10.) In the alternative, the State asserts that federal habeas review is procedurally barred due to Wilson's procedural default of his claims at the state level. *Id.*

Wilson's habeas petition is now ready for review.

### III. DISCUSSION

As an initial matter, the court agrees with the State's contention that Wilson's Fourth Amendment claim does not provide a basis for federal habeas relief under *Stone v. Powell*, 428 U.S. 465 (1976). In *Stone*, the United States Supreme Court held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground the evidence obtained in an unconstitutional search or seizure was introduced at trial." *Id.* at 494. Federal habeas review of a Fourth Amendment claim is precluded even if the petitioner did not actually litigate the claim in the state courts, provided that the failure to litigate was not due to some unconscionable breakdown in the state court process. *Boyd v. Mintz*, 631 F.2d 247, 250 (3d Cir. 1980); *Hubbard v. Jeffes*, 653 F.2d 99, 103 (3d Cir. 1981).

Here, even though Wilson did not litigate his Fourth Amendment claim in the state

courts, he has not alleged, and the record does not indicate, that he was denied such an opportunity. Thus, Wilson’s Fourth Amendment claim does not assert an appropriate basis for federal habeas review.<sup>1</sup> Moreover, as explained below, the court must dismiss Wilson’s entire habeas petition as time-barred.

#### **A. One-Year Statute of Limitation**

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) prescribes a one-year period of limitations for state prisoners seeking federal habeas relief under 28 U.S.C. §

2254. 28 U.S.C. § 2244(d)(1). The one-year limitations period begins to 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;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). AEDPA’s one-year limitations period can be extended, however, if statutory or equitable tolling applies. 28 U.S.C. § 2244(d)(2)(enumerating statutory tolling

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<sup>1</sup>Additionally, Wilson’s Fourth Amendment claim is beyond the scope of federal habeas review because he pled guilty. *Walling v. Bianco*, 2002 WL 31005830, at \*2 (D. Del. Sept. 4, 2002). The United States Supreme Court has held that the validity of a conviction obtained pursuant to a guilty plea “cannot be affected by an alleged Fourth Amendment violation because the conviction does not rest in any way on evidence that may have been improperly seized.” *Haring v. Prosise*, 462 U.S. 306, 321 (1983). “The conclusion that a Fourth Amendment claim ordinarily may not be raised in a habeas proceeding following a plea of guilty . . . rests on the simple fact that the claim is irrelevant to the constitutional validity of the conviction.” *Id.*

provisions); *Miller v. New Jersey Dept. of Corr.*, 145 F.3d 616, 618 (3d Cir. 1998)(holding AEDPA's one-year filing period is subject to equitable tolling); *Merritt v. Blaine*, 326 F.3d 157, 169 (3d Cir. 2003)(same).

Wilson filed his § 2254 petition after AEDPA's enactment in 1996, thus, it is subject to AEDPA's one-year limitations period. *See generally Lindh v. Murphy*, 521 U.S. 320, 326 (1997)(AEDPA's terms apply to habeas petitions filed after its enactment on April 24, 1996). Wilson does not allege, nor can the court discern, any facts triggering the possible starting points for the limitations period enumerated in §§ 2244(d)(1)(B),(C), or (D). As such, the one-year period of limitations began to run when Wilson's conviction became final under § 2244(d)(1)(A).

Pursuant to § 2244(d)(1)(A), if a state prisoner does not appeal a state court judgment, the state court criminal judgment becomes final, and the statute of limitations begins to run, on the date on which the time for seeking direct review in state court expires. *Kapral v. United States*, 166 F.3d 565, 577 (3d Cir. 1999). Here, the Superior Court sentenced Wilson on July 18, 2000 and, because he did not appeal, Wilson's conviction became final on August 17, 2000. *See Del. Supr. Ct. R. 6(a)(ii)*(establishing a 30 day period for timely filing a notice of appeal). Consequently, Wilson had until August 16, 2001 to timely file his habeas petition. Wilson, however, did not file his petition until November 13, 2003.<sup>2</sup> Thus, the court will have to dismiss

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<sup>2</sup>A *pro se* prisoner's habeas petition is deemed filed on the date he delivers it to prison officials for mailing to the district court. *See Longenette v. Krusing*, 322 F.3d 758, 761 (3d Cir. 2003)(the date on which a prisoner transmitted documents to prison authorities is to be considered the actual filing date); *Burns v. Morton*, 134 F.3d 109, 113 (3d Cir. 1998). Wilson's habeas petition is dated November 13, 2003, and presumably, he could not have presented it to prison officials for mailing any earlier than that date. As such, the court adopts November 13, 2003 as the presumptive filing date. *See Woods v. Kearney*, 215 F. Supp. 2d 458, 460 (D. Del. 2002); *Gholdson v. Snyder*, 2001 WL 657722, at \*3 (D. Del. May 9, 2001).

his habeas petition as untimely unless the limitations period can be statutorily or equitably tolled. *See Jones v. Morton*, 195 F.3d 153, 158 (3d Cir. 1999).

### **B. Statutory Tolling**

Section 2244(d)(2) of 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 properly filed state post-conviction motion tolls AEDPA’s limitations period during the time a petitioner pursues his state post-conviction remedies, including any post-conviction appeals.<sup>3</sup> *Swartz v. Meyers*, 204 F.3d 417, 424-25 (3d Cir. 2000). However, a properly filed state post-conviction motion can only toll the federal habeas limitations period if the post-conviction motion itself is filed within the federal one-year limitations period. *See Price v. Taylor*, 2002 WL 31107363, at \*2 (D. Del. Sept. 23, 2002). In other words, AEDPA’s limitations period does not start anew when a petitioner files a Rule 61 motion after the one-year has previously expired. *See Gholdson*, 2001 WL 657722, at \*3 .

In the instant case, the limitations period had already expired in August 2001 when

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<sup>3</sup>The 90-day period during which a state prisoner may file a petition for a writ of certiorari in the United States Supreme Court from the denial of his post-conviction motion does not toll AEDPA’s limitations period. *Stokes v. Dist. Att’y of the County of Philadelphia*, 247 F.3d 539, 543 (3d Cir. 2001).

Wilson filed his motion for state post-conviction relief on January 24, 2003. Thus, Wilson's Rule 61 motion has no tolling effect under § 2244(d)(2).

### **C. Equitable Tolling**

A court, in its discretion, may equitably toll the one-year filing period when “the petitioner has in some extraordinary way . . . been prevented from asserting his or her rights.” *Miller v. New Jersey State Dep't of Corrs.*, 145 F.3d 616 (3d Cir. 1998)(internal citations omitted). Federal courts invoke the doctrine of equitable tolling “only sparingly.” *See United States v. Midgley*, 142 F.3d 174, 179 (3d Cir. 1998). The Third Circuit permits equitable tolling for habeas petitions in only three 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

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

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.” *Id.* (quoting *Midgley*, 142 F.3d at 179). 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).

Here, Wilson does not allege, and the record does not reveal, that any extraordinary circumstances prevented him from timely filing his habeas petition. Even if Wilson made a mistake or miscalculation regarding the one-year filing period, this mistake does not warrant equitable tolling. *See Simpson v. Snyder*, 2002 WL 1000094, at \*3 (D. Del. May 14, 2002). Accordingly, the court concludes that the doctrine of equitable tolling is not available to Wilson

on the facts he has presented and, therefore, his § 2254 petition will be dismissed as untimely.<sup>4</sup>

#### IV. CERTIFICATE OF APPEALABILITY

When a district court issues a final order denying a § 2254 petition, the court must also decide whether to issue a certificate of appealability. *See* Third Circuit Local Appellate Rule 22.2. A certificate of appealability is appropriate when a petitioner makes a “substantial showing of the denial of a constitutional right” by demonstrating “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

After denying a § 2254 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.*

The court concludes that Wilson’s habeas petition must be dismissed as untimely. Reasonable jurists would not find this conclusion to be unreasonable. Consequently, the court declines to issue a certificate of appealability.

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<sup>4</sup>The State also argues that Wilson’s § 2254 petition can be dismissed as procedurally barred due to his procedural default at the state court level. Because the court concludes that Wilson’s § 2254 petition is untimely, it will not discuss the issue of procedural default.



## **V. CONCLUSION**

For the reasons stated, Wilson's petition for habeas relief pursuant to 28 U.S.C. § 2254 is denied. An appropriate order shall issue.

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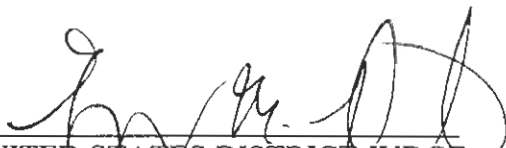
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	)	
RICK KEARNEY,	)	
Warden,	)	
	)	
Respondent.	)	

**ORDER**

At Wilmington, this 29<sup>th</sup> day of April, 2005, consistent with the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner James A. Wilson's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED, and the relief requested therein is DENIED. (D.I. 1.)
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).

  
UNITED STATES DISTRICT JUDGE