

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HENRY R. TAYLOR, JR., :  
 :  
 Petitioner, :  
 :  
 v. : Civil Action No. 03-400 JJF  
 :  
 THOMAS CARROLL, Warden, and :  
 M. JANE BRADY, Attorney :  
 General for the State of :  
 Delaware, :  
 :  
 Respondents. :

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Henry R. Taylor, Jr., Smyrna, Delaware.  
Pro Se Petitioner.

Elizabeth R. McFarlan, Esquire, Deputy Attorney General, DELAWARE  
DEPARTMENT OF JUSTICE, Wilmington, Delaware.  
Attorney for Respondents.

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June 16, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Henry Taylor, Jr. (D.I. 2.) For the reasons set forth below, the Court will dismiss the Petition as time-barred by the one-year limitation period of 28 U.S.C. § 2244(d)(1).

**BACKGROUND**

On September 6, 1989, a jury found Petitioner guilty of burglary in the second degree. On November 16, 1989, the Superior Court declared Petitioner to be a habitual offender pursuant to 11 Del. C. § 4214(b), and sentenced him to life imprisonment. On March 18, 1991, Petitioner's conviction and sentence were affirmed by the Delaware Supreme Court on direct appeal. Taylor v. State, 593 A.2d 590, 1991 WL 57087 (Del. March 18, 1991).

**STANDARD OF REVIEW**

The Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA") provides a one-year statute of limitation for the filing of habeas petitions by state prisoners. 28 U.S.C. § 2244(d)(1). In relevant part, 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[.]

Id. The AEDPA became effective on April 24, 1996. In order to avoid an impermissible retroactive effect, state prisoners whose convictions became "final" prior to the enactment of the AEDPA are provided a one-year grace period, absent any additional tolling, from the enactment date of the AEDPA. Thus, in order to timely file, such petitioners must have filed their petitions by April 23, 1997. Douglas v. Horn, 359 F.3d 257, 261 (3d Cir. 2004) (citing Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998)).

## **DISCUSSION**

### **I. Parties' Contentions**

Petitioner asserts five grounds for relief in his Petition: 1) that he is innocent; 2) that he is entitled to a remand because the Superior Court lacked jurisdiction to impose a life sentence pursuant to the habitual offender statute; 3) ineffective assistance of trial counsel; 4) that the Superior Court erred in denying his post-conviction motions without a hearing; and 5) that the prosecutor failed to disclose impeachment evidence and thus violated his Sixth and Fourteenth Amendment rights.

Respondents counter that the instant Petition should be dismissed because it is untimely pursuant to 28 U.S.C. § 2244(d) and is procedurally barred.

## II. Decision

### A. Limitation Period

Petitioner's conviction became final prior to the enactment of the AEDPA. Petitioner was convicted by a jury in Superior Court on September 6, 1989 and the Delaware Supreme Court affirmed the conviction and sentence on March 18, 1991. From this date, Petitioner had ninety days by which to file a writ of certiorari to the United States Supreme Court. See Supreme Court Rule 13.1. Although Petitioner did not file for certiorari, his conviction did not become "final" until the period for seeking review to the Supreme Court expired. Kapral v. United States, 166 F.3d 565, 576-77 (3d Cir. 1999). Therefore, Petitioner's conviction became final on June 18, 1991, prior to the enactment of the AEDPA. Accordingly, Petitioner could have filed a timely habeas petition, absent any circumstances justifying tolling, no later than April 23, 1997. See Douglas, 359 F.3d at 261.

Petitioner delivered the Petition to prison authorities for mailing on April 15, 2003. Thus, the Court considers April 15, 2003, to be the filing date. Burns, 134 F.3d at 113 (holding that a habeas petition "is deemed filed at the moment [a petitioner] delivers it to prison officials for mailing to the district court"). This is beyond the April 23, 1997, limitations period, and therefore, absent circumstances justifying the tolling of the statute of limitations, the Petition will be time-

barred.

B. Tolling

1. Statutory Tolling

Section 2244(d)(2) provides for statutory tolling of the one-year limitations period of the AEDPA. Section 2244(d)(2) states:

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). The Court's review of the Superior Court docket reveals that Petitioner filed various motions following the Delaware Supreme Court's denial of his direct appeal. Petitioner filed his first post-conviction relief motion on March 10, 1994. (D.I. 37 in Superior Court docket.) It was denied by the Superior Court on June 13, 1994 (D.I. 43 in Superior Court docket), and affirmed by the Delaware Supreme Court on December 7, 1994. Taylor v. State of Delaware, No. 265, 1994 (Del. Dec. 7, 1994). In addition, Petitioner filed a motion for correction of his sentence on July 15, 1998 (D.I. 54 in Superior Court docket), and a second post-conviction relief motion on June 11, 2001. (D.I. 64 in Superior Court docket.) None of these filings tolled the limitations provision of Section 2244(d)(1) because they were filed (and no longer pending) either before the enactment of the AEDPA or after the one-year period had already

expired.

With respect to the remaining statutory tolling provisions of Section 2244(d)(1), Petitioner has provided the Court with no facts by which it might find that subsections (B) or (C) apply. Also, the Court concludes that the only arguably applicable statutory tolling provision remaining, Section 2244(d)(1)(D), does not toll the statute of limitations in this case.

Section 2244(d)(1)(D) provides that Section 2244(d)(1)'s limitation period shall toll until "the date on which the factual predicate of the claim . . . presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2244(d)(1)(D). In his Petition, Petitioner asserts that the State withheld exculpatory material that would have materially affected the jury's evaluation of his guilt. Thus, it appears that Section 2244(d)(1)(D) could apply if Petitioner was unaware of this allegedly withheld information until less than one-year prior to the date he filed his Petition. See Owens v. Boyd, 235 F.3d 356, 359 (7th Cir. 2000). However, the record reflects that Petitioner was aware of this information when he filed his first post-conviction relief motion on March 10, 1994. See State v. Taylor, Cr. A. No. IN89-06-0083-R1, \*2 (Del. Super. June 13, 1994). Accordingly, the Court concludes that Section 2244(d)(1)(D) does not toll the limitations period for the instant Petition.

## 2. Equitable Tolling

The one-year filing period of Section 2244(d)(1) may also be tolled if “\`principle[s] 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.’” Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001) (quoting Miller v. New Jersey Dep’t of Corr., 145 F.3d 616, 618 (3d Cir. 1998)). In the Petition, Petitioner has not provided facts establishing that he was “in some extraordinary way” prevented from asserting his rights prior to the expiration of the one-year limitation period of Section 2244(d)(1). Accordingly, the Court concludes that equitable tolling does not apply to the instant case and the Court must deny the Petition as untimely.

## C. 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, the instant 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.

#### **CONCLUSION**

For the reasons discussed, the Court will dismiss the Petition as time-barred by the one-year limitation period of 28 U.S.C. § 2244(d)(1). The Court also declines to issue a certificate of appealability.

An appropriate Order will be entered.



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**O R D E R**

At Wilmington, this 16<sup>TH</sup> day of June, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1) The Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (D.I. 2), filed by Petitioner Henry R. Taylor 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