IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DETLEF F. HARTMANN,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 03-796-JJF
	:	
THOMAS CARROLL, Warden,	:	
	:	
Respondent.	:	

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Detlef F. Hartmann. Pro Se Petitioner.

Elizabeth R. McFarlan, Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware. Counsel for Respondent.

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MEMORANDUM OPINION

November 16, 2004
Wilmington, Delaware

Farnan, District Judge

I. INTRODUCTION

Petitioner Detlef F. Hartmann is a Delaware inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the Court is Petitioner's Petition For A Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (D.I. 2; D.I. 12.) For the reasons discussed, the Court concludes that Petitioner's habeas petition is time-barred by the one-year period of limitations prescribed in 28 U.S.C. § 2244(d)(1).

II. BACKGROUND

In December 1999, Petitioner was indicted on multiple counts of unlawful sexual intercourse, unlawful sexual contact, and possession of child pornography. In March 2001, Petitioner pled guilty in the Delaware Superior Court to one count of second degree unlawful sexual intercourse (a lesser included offense of first degree unlawful sexual intercourse) and two counts of unlawful sexual contact. The victim was his daughter. Hartmann v. State, 818 A.2d 970 (Del. 2003). Petitioner was immediately sentenced to an aggregate of nineteen years incarceration, suspended after ten mandatory years for decreasing levels of supervision. (D.I. 23, Del. Super. Ct. Dkt. Item 49.) He did not appeal his conviction or sentence.

In June and July 2001, Petitioner filed two pro se motions for reduction of sentence in the Delaware Superior Court. (D.I.

23, Del. Super. Ct. Dkt. Items 53, 56.) The Superior Court denied the motions in June 2002. In November 2002, Petitioner filed a motion in the Superior Court titled "Motion to Dismiss," contending that the Superior Court did not have jurisdiction over the charges in the indictment and that his counsel had been ineffective for failing to address this alleged defect. The Superior Court struck the motion as a nonconforming document, and the Delaware Supreme Court affirmed the decision. Hartmann, 818 A.2d at 870.

In August 2003, Petitioner, acting pro se, filed the pending application for federal habeas relief. (D.I. 2; D.I. 12.) Petitioner contends: (1) the trial court lacked jurisdiction to convict him because the charges should have been brought in Family Court, not the Superior Court; (2) his defense counsel was ineffective because he did not investigate, file a motion to dismiss, or inform Petitioner that the trial court lacked jurisdiction; (3) the prosecution improperly charged him in the wrong court; (4) his plea was involuntary due to his counsel's failure to inform him of the jurisdictional problem; and (5) the conditions of his confinement are too restrictive with respect to his access to the legal materials and the internet.[1] (D.I. 2 at

[1]To the extent Petitioner's conditions claim is an independent claim, it is not properly asserted pursuant to 28 U.S.C. § 2254. Rather, it must be asserted under 42 U.S.C. § 1983. See Preiser v. Rodriguez, 411 U.S. 475, 498-99 & n. 14 (1973)(a § 1983 action is a proper remedy for a state prisoner

5A-5D; D.I. 12.)

Respondent asks the Court to dismiss the petition as time-barred. (D.I. 38.) In the alternative, Respondent contends that the petition is a mixed petition that should be dismissed unless Petitioner voluntarily withdraws the unexhausted ineffective assistance of counsel claim. Id.

III. DISCUSSION

A. One-Year Statute of Limitations

Petitioner's § 2254 petition is subject to requirements of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). See generally Lindh v. Murphy, 521 U.S. 320, 336 (1997)(holding AEDPA applies to "such cases as were filed after the statute's enactment"); Lawrie v. Snyder, 9 F. Supp. 2d 428, 433 n.1 (D. Del 1998). AEDPA prescribes a one-year period of limitations for the filing of habeas petitions by state prisoners, which 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

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who is making a constitutional challenge to the conditions of his prison life"); Leamer v. Fauver, 288 F.3d 532, 540-44 (3d Cir. 2002)(an inmate's challenge that "does not necessarily imply the invalidity of [his] conviction or continuing confinement . . . is properly brought under § 1983"). However, to the extent Petitioner complains about the conditions as an additional argument for tolling the limitations period, the Court discusses his claim infra at 9-10.

> 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).

Petitioner does not allege, nor can the Court discern, any facts triggering the application of § 2244(d)(1)(B),(C), or (D). As such, the one-year period of limitations began to run when Petitioner's conviction became final under § 2244(d)(1)(A).

Pursuant to § 2244(d)(1)(A), when a state prisoner appeals a state court judgment, the state court criminal judgment becomes "final," and the statute of limitations begins to run, "at the conclusion of review in the United States Supreme Court or when the [90-day] time [period] for seeking certiorari review expires." See Kapral v. United States, 166 F.3d 565, 575, 578 (3d Cir. 1999); Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999). However, if a petitioner does not appeal a state court judgment, then the conviction becomes final on the "date on which the time for filing such an appeal expired." See Kapral, 166 F.3d at 577.

In this case, the Delaware Superior Court sentenced Petitioner on March 29, 2001. (D.I. 23, Del. Super. Ct. Dkt.

PK99120515 Item 49.) He did not appeal. Delaware law requires a timely notice of appeal in a direct criminal appeal to be filed within thirty days after a sentence is imposed. See 10 Del. Code Ann. § 147; Del. Supr. Ct. R. 6(a)(ii). Consequently, Petitioner's conviction became final for the purposes of § 2244(d)(1)(A) on April 30, 2001.[2] Thus, to timely file a habeas petition with this court, Petitioner needed to file his § 2254 petition no later than April 30, 2002.

A pro se prisoner's habeas petition is deemed filed on the date it is delivered to prison officials for mailing to the district court. See Longenette v. Krusing, 322 F.3d 758, 761 (3d Cir. 2003); Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998); Woods v. Kearney, 215 F. Supp. 2d 458, 460 (D. Del. 2002). Petitioner's habeas application is dated August 4, 2003, and presumably, he could not have delivered it to prison officials for mailing any earlier than that date. See, e.g., Gholdson v. Snyder, 2001 WL 657722, at *2 n.1 (D. Del. May 9, 2001). Consequently, the Court finds that August 4, 2003 is the filing date, which is well past the April 2002 filing deadline. Thus, unless the limitations period can be statutorily or equitably

[2]Pursuant to Del. Supr. Ct. R. 11(a), when computing any period of time prescribed by the rules, if the last day of the period falls on a holiday, Saturday, or Sunday, the period "shall run until the end of the next day on which the office of the Clerk is open." Here, the 30-day appeal period expired on Saturday, April 28, 2001. Thus, the time to appeal was extended through the end of the day on Monday, April 30, 2001.

tolled, Petitioner's habeas petition is time-barred. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999). The Court will discuss each doctrine.

B. Statutory Tolling

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). Procedural requirements include "the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee." Artuz v. Bennett, 531 U.S. 4, 8 (2000). However, a properly filed state post-conviction motion will 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).

Here, Petitioner filed two Motions for Reduction of Sentence in the Delaware Superior Court: one on June 29, 2001 and one on

July 26, 2001. Respondent contends that these Motions "arguably did not trigger the tolling mechanism of § 2244(d)(2)," and supports this statement by citing to Walkowiak v. Haines, 272 F.3d 234, 237-38 (4th Cir. 2001). However, the Court need not determine this issue because the Petition is time-barred even if the Rule 35 Motions trigger the statutory tolling doctrine of § 2244(d)(2). For example, when Petitioner filed his first Rule 35 Motion on June 29, 2001, 59 days of the filing period had already expired. The Superior Court denied this Motion, together with the second Rule 35 Motion, on June 25, 2002. As such, if § 2244(d)(2) applies, then the Rule 35 Motions tolled the limitations period from June 29, 2001 through July 26, 2002 (the expiration date for filing a notice of appeal regarding this denial). When the limitations period started again on July 27, 2002, only 306 days remained in the one-year filing period. Consequently, Petitioner had to file his federal habeas Petition by May 29, 2003 to be timely. Petitioner's filing on August 4, 2003 was too late.

Further, Petitioner's Motion to Dismiss does not toll the limitations period because it does not constitute a "properly filed" application for state post-conviction relief. 28 U.S.C. § 2244(d)(2). Petitioner filed his Motion to Dismiss in the Delaware Superior Court on November 12, 2002, but the Superior Court struck the document as nonconforming because it was not

filed pursuant to Delaware Superior Court Criminal Rule 61.[3] See Hartmann, 818 A.2d at 970. The Delaware Supreme Court affirmed this dismissal.[4] Id. Consequently, the Motion to Dismiss does not trigger the statutory tolling provision of § 2244(d)(2).

In short, statutory tolling does not render Petitioner's § 2254 petition timely.

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). In general, 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 three circumstances:

(1) where the defendant actively misled the plaintiff;

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[3]If the Motion to Dismiss does not toll the limitations period, then, by extension, Petitioner's Motions to Reconsider the Superior Court's decision to strike his Motion to Dismiss do not toll the limitations period. See Douglas v. Horn, 359 F.3d 257, 262 (3d Cir. 2004).

[4]The Delaware Supreme Court also denied Petitioner's Motion to Dismiss as meritless. This alternative holding does not negate the Superior Court's procedural determination that the motion should be struck as nonconforming. See, e.g., Hubbard v. Pinchak, 378 F.3d 333, 339 n.3 (3d Cir. 2004)(a federal court cannot avoid state court's procedural ruling due to the state court's alternative ruling on the merits).

> (2) where the plaintiff was in some extraordinary way prevented from asserting his rights; or
> (3) where the plaintiff timely asserted his rights mistakenly in the wrong forum.

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).

Petitioner's "Preliminary Reply" to Respondent's Answer contends that he has diligently pursued his claims. He also asserts several "extraordinary circumstances" requiring the equitable tolling of the limitations period: (1) his access to the law library and the internet was restricted and he did not have sufficient "time to read, comprehend and apply his rights"; (2) he is not educated or knowledgeable in the area of law; (3) it took him five months to discover his attorney's "misconduct and nonfeasance" in failing to file a direct appeal; and (4) his is "actually innocent" of the charges. (D.I. 26 at 2-3, 9.) The Court will discuss each "extraordinary circumstance" in turn.

Despite Petitioner's assertion, limited access to the law library and the internet do not necessarily warrant equitable

tolling of the limitations period. See Garrick v. Vaughn, 2003 WL 22331774, at *4 (E.D. Pa. Sept. 5, 2003)("routine aspects of prison life such as lockdowns, lack of access to legal resources, and disturbances . . . 'do not constitute extraordinary circumstances'")(internal citation omitted); Perry v. Vaughn, 2003 WL 22391236, at *4 (E.D. Pa. Oct. 17, 2003); see also Holman v. Sobina, 2004 WL 1196651, at *3 (E.D. Pa. May 28, 2004)("inadequacy of prison legal materials is not the kind of extraordinary circumstance that would warrant equitable tolling"). Here, Petitioner has not demonstrated how the alleged restricted access prevented him from timely filing his federal habeas petition. Indeed, the form habeas petition filed by Petitioner specifically instructs him to state each ground "briefly without citing cases or law." Further, after the Delaware Supreme Court affirmed the Superior Court's decision regarding Petitioner's Motion to Dismiss, Petitioner still had two months remaining in the limitations period, "time enough for [him], acting with reasonable diligence, to prepare and file at least a basic pro se habeas petition." Brown v. Shannon, 322 F.3d 768, 774 (3d Cir. 2003). Thus, the alleged limited library and internet access did not prevent Petitioner from filing his habeas petition.

As for Petitioner's ignorance of the law, the Court has held that a lack of legal knowledge does not constitute an

extraordinary circumstance warranting equitable tolling. See Williams v. Taylor, Civ. Act. No. 02-18-JJF, 2002 WL 1459530, at *3 (D. Del. July 3, 2002).

Likewise, the failure of defense counsel to file a direct appeal and his alleged failure to inform Petitioner about AEDPA's limitations period do not warrant equitable tolling. The Third Circuit adheres to the principle that, in non-capital cases, and absent attorney deception or death, "attorney error, miscalculation, inadequate research, or other mistakes have not been found to rise to the 'extraordinary' circumstances required for equitable tolling." Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001). If, however, an attorney affirmatively misrepresents that he will file a complaint, equitable tolling is warranted, provided that the petitioner demonstrates extreme diligence in pursuing his claim and the defendant will not be prejudiced. Schlueter v. Varner, 384 F.3d 69, 76-7 (3d Cir. 2004)(citing Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 242 (3d Cir. 1999)).

Petitioner has not alleged that he discussed his intention to appeal with his attorney, nor has he alleged that his attorney misled him into believing that he had filed an appeal on Petitioner's behalf. Also, Petitioner has failed to demonstrate how the failure of his counsel to file an appeal affected his ability to timely file a federal habeas petition. Further,

because prisoners do not have a constitutional right to counsel when "mounting collateral attacks on their convictions," Pennsylvania v. Finley, 481 U.S. 551, 556 (1990), the "failure" of defense counsel to inform Petitioner of AEDPA's limitations period is not an extraordinary circumstance. See, e.g., Johnson v. Hendricks, 314 F.3d 159, 163 (3d Cir. 2002)("an attorney's mistake in determining the date a habeas petition is due" does not constitute an extraordinary circumstance for purposes of equitable tolling).

Finally, Petitioner appears to assert his actual innocence as a reason for equitably tolling the one-year limitations period. (D.I. 26 at 9.) However, neither the Third Circuit, nor the United States Supreme Court, has addressed whether a petitioner's "actual innocence" qualifies as an exception to AEDPA's statute of limitations. Morales v. Carroll, 2004 WL 1043723, at *3 (D. Del. Apr. 28, 2004); Devine v. Diguglielmo, 2004 WL 945156, at *3 & n.4 (E.D. Pa. Apr. 30, 2004)(collecting cases). Even if such an exception does exist, Petitioner's conclusory statements do not persuade the Court that he is actually innocent. See Morales, 2004 WL 1043723, at *3 (discussing how a petitioner proves actual innocence); Stocker v. Warden, SCI Graterford, 2004 WL 603400, at**13-16 (E.D. Pa. Mar. 25, 2004)(determining that AEDPA's limitations should be equitably tolled under the circumstances of that case because

petitioner's actual innocence was undisputed). Accordingly, the Court concludes that the doctrine of equitable tolling is not available to Petitioner on the facts he has presented. Petitioner's § 2254 Petition will be dismissed as untimely.[5]

D. Pending Motions

Petitioner has filed the following motions: (1) Motion for Summary Judgment (D.I. 27.); (2) Motion to Stay Case (D.I. 28.); (3) Motion for Leave to File Oversized Brief (D.I. 29.); (4) Motion for Temporary Injunction[6] (D.I. 39.); and (5) Motion for

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[5]Respondent alternatively argues that, unless Petitioner voluntarily withdraws his unexhausted ineffective assistance of counsel claim, the Court should dismiss the Petition as mixed. Respondent then contends that even if the unexhausted claim is withdrawn, the remaining claims in the Petition should be dismissed as procedurally barred due to Petitioner's procedural default at the state level and because one claim is not cognizable on federal habeas review. However, the Court's conclusion that the Petition is time-barred obviates the need to discuss these alternate grounds for dismissal because "'[t]he statute of limitations . . . and the exhaustion doctrine . . . impose entirely distinct requirements on habeas petitioners; both must be satisfied before a federal court may consider the merits of a petition.'" Sweger v. Chesney, 294 F.3d 506, 518-19 (3d Cir. 2002)(citing Tillema v. Long, 253 F.3d 494 (9th Cir. 2001)). In sum, even if Petitioner did withdraw the ineffective assistance of counsel claim or exhaust state remedies for the claim, it would not change the fact that his Petition was already time-barred when he filed it in this Court.

[6]Petitioner titled this document "Addendum to Habeas Corpus and Civil Rights Action." However, he included language regarding the "emergency nature" of his case and "imminent danger," thereby causing the document to be construed on the docket as a Motion for Temporary Injunction. However, the contents of this addendum clearly demonstrate that Petitioner is merely attempting to add claims to or further support his pending Petition, not move for a temporary injunction.

Reconsideration of this Court's Order dismissing Petitioner's Motion for Brief Date.[7] (D.I. 43.) Because the Court has concluded that it must dismiss Petitioner's § 2254 petition as time-barred, the Court will deny these Motions as moot.

IV. CERTIFICATE OF APPEALABILITY

Finally, the Court must decide whether to issue a certificate of appealabilty. See Third Circuit Local Appellate Rule 22.2. A certificate of appealability may only be issued 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).

When a federal court denies a habeas 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

[7]Petitioner never served Respondent with his Motion for Summary Judgment, his Motion to Stay Case, or his Motion to File Oversized Brief.

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 Petitioner's habeas Petition must be dismissed as untimely. Reasonable jurists would not find this conclusion to be unreasonable, and therefore, the Court declines to issue a certificate of appealability.

V. CONCLUSION

Petitioner's Petition For A Writ Of Habeas Corpus Pursuant To 28 U.S.C. § 2254 will be denied. An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

DETLEF F. HARTMANN,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 03-796-JJF
	:	
THOMAS CARROLL, Warden,	:	
	:	
Respondent.	:	

ORDER

At Wilmington, this 16th day of November, 2004, consistent with the Memorandum Opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Detlef F. Hartmann'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. 2; D.I. 12.)

2. The following Motions are DISMISSED as MOOT:

(1) Motion for Summary Judgment (D.I. 27.);

(2) Motion to Stay Case (D.I. 28.);

(3) Motion for Leave to File Oversized Brief (D.I. 29.);

(4) Motion for Temporary Injunction (D.I. 39.); and

(5) Motion for Reconsideration of this Court's Order dismissing Petitioner's Motion for Brief Date.

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