

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RODNEY ALLEN	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
DONALD VAUGHN, ET AL.	:	NO. 01-1494
	:	
Defendant	:	
	:	
NEWCOMER, S.J.	:	June , 2002

O P I N I O N

Presently before this Court is United States Magistrate Judge M. Faith Angell's Report and Recommendation in this matter. For the reasons set forth below, said Report and Recommendation is remanded for further consideration consistent with this opinion.

BACKGROUND

In 1995, before the Commonwealth's Court of Common Pleas, petitioner pled guilty, but mentally ill, to numerous counts of robbery, burglary, criminal conspiracy, unlawful restraint, attempted theft, possession of an instrument of crime and violations of the Uniform Firearms Act. Consequently, he was sentenced to a term of imprisonment of thirty-five to seventy years. Later, petitioner appealed his guilty plea and sentence. On September 9, 1997, the Pennsylvania Superior Court denied his

final appeal for failure to file a brief. On March 28, 2001, the instant habeas petition was filed with this Court. The Commonwealth answered said petition arguing that the one year statute of limitations had lapsed and therefore, petitioner's habeas petition should be dismissed. On December 19, 2001, United States Magistrate Judge M. Faith Angell issued a Report and Recommendation dismissing the petition as untimely. Petitioner responded with objections to the Report and Recommendation requesting that the statute of limitations be equitably tolled as a result of his inability to file within the statutorily mandated period. Petitioner explained that throughout the limitations period he was under the influence of medication which prevented him from actively filing such a petition.

On June 17, 2002, this Court held an evidentiary hearing at which time petitioner testified to the cumulative effect of the five medications he was taking during the period of September 9, 1997, through March 28, 2001. The district attorney offered no evidence.

DISCUSSION

Equitable tolling is proper only when the principles of equity would make the rigid application of a limitation period unfair. Nara v. Frank, 264 F.3d 310, 319 (3d Cir. 2001).

Petitioner must show that he has "in some extraordinary way" been prevented from asserting his rights and that he exercised reasonable diligence in bringing the claim. Id. Excusable neglect is not sufficient. Id.

Here, it is undisputed that the normal statute of limitations for petitioner's habeas petition began to run on September 9, 1997, and lapsed on September 9, 1998. The seemingly credible testimony given by petitioner, however, establishes that he was unable to pursue the filing of such a petition as the medication he was taking during this time left him heavily sedated. This testimony is corroborated by the sudden cessation of petitioner's filings with various courts concerning his appeals. The break in his seemingly routine and conscientious filings led to the dismissal of his final appeal with the Pennsylvania Superior Court which triggered the statute of limitations for the instant petition.

Surprisingly, the district attorney failed to offer any evidence whatsoever concerning the ability or inability of the petitioner to file a petition during the period in question. In light of the only evidence offered, this Court finds that the petitioner was precluded in an extraordinary way from filing a timely petition and that rigid application of the proscribed limitation period would, in fact, be unfair. Furthermore, it is the finding of this Court that reasonable diligence was exercised

in bringing this petition. Therefore, this Court finds that the applicable statute of limitations for filing a habeas petition in this matter has been equitably tolled. The instant petition shall be treated as timely.

AN APPROPRIATE ORDER WILL FOLLOW.

Clarence C. Newcomer, S.J.

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O R D E R

AND NOW, this day of June, 2002, upon consideration of the Report and Recommendation of United States Magistrate Judge M. Faith Angell, it is hereby ORDERED that said Report and Recommendation is REMANDED to Judge M. Faith Angell for further consideration consistent with the accompanying Opinion.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.