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

ROBERT ALDERMAN Petitioner, v. SUPERINTENDENT CHESNEY, et al Respondents.	: : : : : : :	CIVIL ACTION No. 01-4713

MEMORANDUM AND ORDER

J. M. KELLY, J. **JULY , 2002**

Presently before the Court are the Report and Recommendation ("Report") by Chief United States Magistrate Judge James R. Melinson, and the Objections to Magistrate Recommendation ("Objections") filed by Petitioner Robert Alderman. In his Report, Chief Magistrate Judge Melinson recommended that Alderman's pro se petition for a writ of habeas corpus be denied with prejudice. For the reasons that follow, Petitioner's Objections are denied and the Report is approved and adopted.

BACKGROUND

The Court approves and adopts the background facts as stated in Chief Magistrate Judge Melinson's Report. A summary of the background facts is provided. On March 18, 1991, Alderman was convicted of second-degree murder, possession of an instrument of crime, and burglary. Alderman was sentenced to life imprisonment.

On September 9, 1993, Alderman filed a petition for collateral relief pursuant to Pennsylvania's Post Conviction

Relief Act ("PCRA"), 42 Pa. Cons. Stat. §§ 9541-9546 (West 1998). That petition was dismissed by the PCRA court.

On November 25, 1995 and December 1, 1995, Alderman filed PCRA petitions and Writs of Coram Nobis. The PCRA Court dismissed these petitions as frivolous. Alderman appealed, but the Superior Court dismissed his appeal because he failed to file an appellate brief. Alderman filed his third PCRA petition on December 26, 1996, but it was again dismissed as frivolous.

Alderman's fourth PCRA petition, filed on November 16, 1996, was dismissed as time-barred on March 11, 1999. On November 18, 1999, Alderman filed a fifth PCRA petition, which was also dismissed as untimely. Alderman appealed, but the Superior Court affirmed the order of the PCRA Court on December 22, 2000.

Alderman filed the current writ of habeas corpus, dated August 13, 2001, on September 17, 2001. Alderman claims that: 1) the prosecutor failed to disclose favorable evidence; and 2) he was denied the right to appeal. The Commonwealth responded that the petition must be dismissed as untimely and that the claims raised are meritless.

DISCUSSION

Under 28 U.S.C. § 636(b)(1) (1994), this Court is to make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. See also Fed. R. Civ. P. 72(b). The Court, recognizing

that Petitioner is proceeding pro se, has thoroughly reviewed the statements made by Petitioner in his Objections. However, Petitioner's Objections are merely a restatement of his claims, as they do not address Chief Magistrate Judge Melinson's recommendation that Petitioner's claim is time-barred.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), signed into law on April 24, 1996, significantly altered the rules governing habeas corpus petitions. Petitioners must satisfy the one-year time limitation under AEDPA, 28 U.S.C. § 2244(d)(1), which provides as follows:

> 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;
> >
> > (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 appeal; 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.

Section 2244 further provides that "[t]he 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 Third Circuit Court of Appeals has interpreted the AEDPA to allow for a one-year grace period following its effective date of April 24, 1996. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). Thus, a petitioner whose conviction became final before the effective date of the AEDPA had until April 23, 1997 to file a timely federal habeas petition.

Here, direct review of Alderman's claims became final on April 10, 1993, when the time to seek allocatur from the Supreme Court of Pennsylvania expired. Because his judgment of sentence was final prior to the enactment of the AEDPA, the one-year grace period is applicable, and Alderman had until April 23, 1997 to file his federal habeas petition. However, Alderman did not seek habeas relief until September 17, 2001, more than four years after the grace period had expired. Thus, Alderman's petition is untimely and must be dismissed unless he is entitled to a tolling of the period of limitations through 2001.

As discussed in the Report, Alderman cannot satisfy the requirements of the tolling provision. Only "the time during which a properly filed application for State post-conviction or other relief 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). Alderman filed various PCRA and Coram Nobis petitions that effectively tolled the limitations period to September 10, 1998. However, since he did not file for federal habeas relief until September 17, 2001, he was still more than three years too late.

Further, as discussed in the Report, Alderman does not satisfy any of the exceptions to the period of limitations set forth in § 2244(d)(1)(B)-(D), nor does he present any extraordinary circumstances that would allow the limitations period to be equitably tolled.

Accordingly, Alderman's habeas petition must be denied because it is untimely and fails to meet any exception to the limitations period of the AEDPA.[1]

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[1]Moreover, even if his claims were not time-barred, Alderman would not be entitled to relief as his claims are without merit. The fact that Ms. Walls did not actually own the property where the crimes occurred was not an issue at trial and irrelevant to Alderman's conviction. Her ownership of the home was not necessary to establish that she was lawfully in the house at the time of the attack. Alderman's other claim is that the Superior Court erred in refusing to review his claims on the ground that he failed to file a 1925(b) statement in order to preserve his claims for appellate review in accordance with Pennsylvania Rule of Appellate Procedure 1925(b). This claim is also without merit. Even if his claim were true, Alderman would not be entitled to relief because the Superior Court also rejected his appeal on the ground that his PCRA petition was untimely.

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O R D E R

AND NOW, this day of July, 2002, upon consideration of the Petition for Writ of Habeas Corpus filed by the Petitioner, Robert Alderman (Doc. No. 1), the Report and Recommendation of Chief United States Magistrate Judge James Melinson (Doc. No. 26), and the Petitioner's Objections to Magistrate Recommendation (Doc. No. 27), it is **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**. Petitioner's Objection is **DENIED**.
2. The Petition for a writ of habeas corpus is **DENIED** with prejudice.
3. There is no probable cause to issue a certificate of appealability.
4. The Clerk of the Court is **DIRECTED** to **MARK** this case as **CLOSED**.

BY THE COURT:

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JAMES McGIRR KELLY, J.