

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

YUL B. HAYWARD,	:	
	:	
Petitioner,	:	
	:	No. 01-CV-7128
v.	:	
	:	
PHIL JOHNSON, et al.,	:	
	:	
Respondent.	:	

**MEMORANDUM**

**Green, S.J.** **August** , **2002**

Presently pending is the Report and Recommendation of United States Magistrate Judge M. Faith Angell and Petitioner's Objections thereto. Petitioner objects to the Magistrate's conclusion that his petition for writ of habeas corpus was untimely filed and must be dismissed. Petitioner further objects to the dismissal on the following bases as he claims that: (1) his attorney failed to file the appropriate appeal as petitioner instructed; (2) his father left the police station while petitioner was being questioned; and (3) the police beat him to coerce a confession. Petitioner also appears to object to the statute of limitations for timely filing as "time barriers" and/or blocks for access to justice. For the reasons set forth below, Petitioner's Objections are overruled and the Report and Recommendation is adopted and approved.

Petitioner does not dispute the facts and procedural history of this case, therefore, they will only briefly be restated herein. Petitioner was convicted of first degree murder, robbery and possession of an instrument of crime on March 25, 1977. Petitioner was sentenced to life imprisonment for the murder and seven and one-half to twenty years for the robbery, sentence to run concurrently. He appealed to the Superior Court of Pennsylvania which, on June 1, 1979 rejected his appeal and affirmed the judgments of sentence. Petitioner did not further appeal to the Pennsylvania Supreme Court. Therefore, his judgment of sentence became final on July 1, 1979. See, Pa. R.A.P. 903(a) (providing a 30 day appeal

period after entry of the order from which the appeal is taken). On March 28, 1998, Petitioner filed a pro se petition under Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. C.S.A. § 954, et seq.. On July 21, 1999 the PCRA petition was dismissed for untimely filing. Petitioner appealed the dismissal of his PCRA petition to the Superior Court of Pennsylvania and said appeal was dismissed on July 5, 2000. On December 10, 2001, Petitioner filed the instant habeas petition asserting several grounds for which he claims relief should be granted.

## **Discussion**

The Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2244, became effective on April 26, 1996. It provides applicants with a one-year period of limitation from its effective date within which to file a petition for writ of habeas corpus. Consequently, applicants convicted prior to April 26, 1996 had until April 26, 1997 to file a timely petition for writ of habeas corpus. See, Miller v. New Jersey State Dep't of Corrections, 145 F.3d 615, 617-18 (3d Cir. 1998). Petitioner's conviction became final on July 1, 1979. He was therefore required to file a petition for writ of habeas corpus on or before April 26, 1997. Pursuant to Section 101 of AEDPA the statute of limitations is only tolled for, "[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. . ." Petitioner, however, did not file his PCRA petition until March 1998, well after the expiration of AEDPA's filing deadline for those applicant whose convictions became final before AEDPA's effective date. Therefore, the time during which his PCRA petition was pending does not toll the statute of limitations. His petition must be dismissed as untimely.

Petitioner's other objections address the merits of his petition. This court, however is unable to consider the merits of his petition. Once a petitioner has procedurally defaulted, he must establish cause and prejudice sufficient to excuse his failure to adhere to the established procedural guidelines. See, Schulp v. Delo, 513 U.S. 298, 316, 115 S.Ct. 851, 861

(1995). His alleged constitutional violations can only be reviewed, once he has procedurally defaulted, if his claims fall within the narrow class of cases implicating a fundamental miscarriage of justice. Id. Petitioner has presented no evidence that a fundamental miscarriage of justice occurred or would occur if he were not permitted to proceed with his habeas petition. Therefore, his petition will be dismissed.

An appropriate order follows.

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No. 01-CV-7128

**ORDER**

**AND NOW**, this            day of August 2002, upon consideration of the Petition for Writ of Habeas Corpus, and after review of the Report and Recommendation of the United States Magistrate M. Faith Angell, and Petitioner's Objections thereto, **IT IS HEREBY**

**ORDERED** that:

1. Petitioner's Objections are OVERRULED.
2. The Report and Recommendation is APPROVED and ADOPTED.
3. The Petition for Writ of Habeas Corpus is DENIED and DISMISSED AS TIME BARRED under 28 U.S. C. § 2244(d)(1).
4. There is no probable cause to issue a certificate of appealability.

BY THE COURT:

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Clifford Scott Green, S.J.