

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

ALFONSO DORSEY : CIVIL ACTION
: :
: :
v. : :
: :
ROBERT SHANNON, et al. : NO. 01-CV-568
:

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 17, 2003

Alfonso Dorsey, convicted in state court of first degree murder and conspiracy, is currently incarcerated at the State Correctional Institution at Frackville, Pennsylvania. He filed a Petition for Writ of Habeas Corpus on February 5, 2001. Magistrate Judge Hart issued a Report and Recommendation ("R&R") in which he recommended that Dorsey's petition be denied as untimely under the federal Habeas Corpus statute, 28 U.S.C. §2254. Because Judge Hart's analysis is correct, Dorsey's objections will be overruled and the R&R will be approved and adopted.

Dorsey's conviction became final on April 10, 1992.¹ Since this was before the enactment of the Antiterrorism and Effective

¹ In the R&R, Judge Hart stated that Dorsey's conviction became final on January 9, 1992, because that was the day that the Pennsylvania Supreme Court denied his Petition for Allowance of Appeal. However, his conviction did not become final until the expiration of the 90 day period for filing a petition for a writ of certiorari in the Supreme Court of the United States following his direct appeal. See, Clay v. United States, 537 U.S. 522 (2003).

Death Penalty Act ("AEDPA"), the 1-year statute of limitations, 28 U.S.C. § 2244, for collateral petitions began to run not on the date his conviction became final, but on the date of the enactment of AEDPA, April 24, 1996. Dorsey filed a state Post Conviction Relief Act ("PCRA") petition on January 14, 1997, which tolled the statute of limitations while pending. This petition was denied and the denial was upheld by the Superior Court of Pennsylvania on February 4, 2000. The statute of limitations began to run again on March 5, 2000, the date after which Dorsey could no longer seek an allowance of appeal from the Pennsylvania Supreme Court. Since Dorsey had filed his PCRA petition 265 days after the statute of limitations began to run, he had 100 days after March 5, 2000, in which to file his habeas petition. He did not file this petition until February 5, 2001, so it is untimely. Dorsey had filed a Petition for Extraordinary Relief on August 10, 2000, but this, too, was beyond the 100 days and therefore untimely. It did not toll the statute of limitations because it was not timely filed.

In his first set of objections to the R&R, Dorsey argued that his conviction did not become final until October 26, 2000, when the Supreme Court of Pennsylvania denied his Petition for Extraordinary Relief. Dorsey misunderstands the federal statute governing the timing of federal Habeas Corpus petitions, 28 U.S.C. § 2244. Dorsey also argued that the statute of limitations began to run anew on March 5, 2000, even though his

PCRA petition was filed 265 days after the AEDPA effective date. If so, both his Petition for Extraordinary Relief and his federal habeas petition would have been timely. But the analysis provided by Judge Hart in the R&R is correct and Dorsey's petition is untimely under the federal statute.

The Supreme Court has held that following a petitioner's procedural default, "federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 750 (1991). Petitioner argues that the procedural default caused by the untimeliness of his petition would result in a "fundamental miscarriage of justice," because he is "actually innocent of the crime," as demonstrated by Curtis Brooks' recantation of his trial testimony. Dorsey seeks an evidentiary hearing to demonstrate his innocence and overcome the procedural bar to his habeas petition.

To show a fundamental miscarriage of justice, a petitioner must demonstrate that he is actually innocent of the crime by presenting new evidence of innocence. Keller v. Larkins, 251 F.3d 408, 415-16 (3rd Cir. 2001).

On appeal from the denial of PCRA relief, the Pennsylvania Supreme Court held that inconsistency between Brooks' informal affidavit and the affidavit taken by an investigator made Brooks'

recantation not credible. Under the AEDPA, a district court must defer to state-court findings of fact, with certain exceptions clearly not applicable here. 28 U.S.C. § 2254(d,e).

Magistrate Judge Hart issued a Supplemental R&R to address Dorsey's objections.² Judge Hart reached the same conclusion as he had in the first R&R and expounded on the untimeliness of Dorsey's petition.

Objecting to the Supplemental R&R, Dorsey reiterated his previous arguments and also argued for equitable tolling, since he is proceeding pro se and is incarcerated.

Equitable tolling is proper only when the principles of equity would make the rigid application of a limitation period unfair. Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 618 (3d Cir. 1998). Equitable tolling may be appropriate if: (1) the defendant has actively misled the plaintiff; (2) the plaintiff has in some extraordinary way been prevented from asserting his rights; or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum. Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999). 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. The law is clear that a court must be sparing in its use of equitable tolling. Seitzinger v.

² The court had previously granted Dorsey's request to amend his petition to add additional claims.

Reading Hosp. & Med. Ctr., 165 F.3d 236, 239 (3d Cir. 1999).

Dorsey has failed to demonstrate any extraordinary circumstances that unfairly prevented him from asserting his rights. He cites the fact that he is unlearned in the law and is proceeding pro se and confined in state prison. These do not amount to "extraordinary circumstances" justifying equitable tolling. He was not specifically misled and he did not face any artificial impediments to asserting his rights. Ignorance of the law is insufficient to warrant relief from its mandates.

Judge Hart's R&R will be approved and adopted and Dorsey's Petition for Writ of Habeas Corpus and Motion for Evidentiary Hearing will be denied. An appropriate order follows.

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ORDER

AND NOW, this ____ day of July, 2003, upon consideration of petitioner's Petition for Writ of Habeas Corpus (paper no. 1), Judge Hart's Report and Recommendation (paper no. 19), Judge Hart's Supplemental Report and Recommendation (paper no. 28), petitioner's objections (paper nos. 20, 22, 23, 29, 31 and 32) and petitioner's Motion for Habeas Corpus Evidentiary Hearing and supplemental objections (paper no. 35), it is **ORDERED** that:

1. Magistrate Judge Hart's Report and Recommendation is **APPROVED** and **ADOPTED**.

2. Magistrate Judge Hart's Supplemental Report and Recommendation is **APPROVED** and **ADOPTED**.

3. Petitioner's Motion for Habeas Corpus Evidentiary Hearing is **DENIED**.

4. The Petition for Writ of Habeas Corpus is **DISMISSED** as untimely.

5. There is no basis for the issuance of a certificate of appealability.

S.J.