

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

ROBERT GRAHAM : CIVIL ACTION
 :
 v. :
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 KENNETH KYLER, et al. : NO. 01-1997
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MEMORANDUM

Giles, C.J.

October 31, 2002

I. INTRODUCTION

On April 23, 2001, Petitioner Robert L. Graham, pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is a mentally deficient inmate who has suffered multiple violations of his federal constitutional rights. The Commonwealth of Pennsylvania (“respondent” or “the Commonwealth”) argues that the petition is time-barred pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). On December 18, 2001, Magistrate Judge Wells issued a Report and Recommendation finding the time-bar applicable and recommending that this court deny the petition without an evidentiary hearing and that a certificate of appealability not issue. Following de novo review pursuant to 28 U.S.C. § 636(b)(1)(B), this court declined to adopt the Report and Recommendation. On the basis of Nara v. Frank, 264 F.3d 310 (3d Cir. 2001), the court held an evidentiary hearing on October 7, 2002 to determine whether petitioner Robert Graham was mentally incompetent, and if so, whether this affected his ability to file a timely habeas petition. On that date, the court rendered an oral opinion which is incorporated herein and reserved the right to elaborate upon that opinion.

II. PROCEDURAL HISTORY

On May 23, 1977, Mr. Graham pled guilty in the Court of Common Pleas of Philadelphia County to five counts of burglary, two counts of robbery, and one count of rape, and was sentenced, on July 27, 1977, to not less than 10 nor more than 20 years each for six of the eight counts, for a total sentence of 60 to 120 years. Petitioner filed an appeal to the Superior Court of Pennsylvania, which was nolle prossed by that court on October 13, 1978.

On May 25, 1979, petitioner filed a petition for collateral relief pursuant to the Pennsylvania Post Conviction Hearing Act (“PCHA”), 42 Pa.C.S.A. § 9541, et seq. (repealed). Although on November 8, 1982, the court granted petitioner the right to appeal nunc pro tunc, he failed to do so. In response to a second PCHA petition filed May 8, 1984, petitioner’s nunc pro tunc rights were reinstated on February 25, 1981. On March 25, 1985, petitioner filed a direct appeal in Pennsylvania Superior Court. This was dismissed without prejudice due to counsel error. Petitioner filed a third PCHA petition and his nunc pro tunc rights were again reinstated on June 19, 1986. On February 25, 1987, the Superior Court affirmed the judgment of sentence. Petitioner filed the instant habeas petition, pro se, on April 23, 2001. On January 25, 2002, counsel was appointed and an evidentiary hearing was scheduled on the competency issue.

III. FACTUAL BACKGROUND

The evidence at the hearing showed that Robert Graham was given by his mother to a woman named Marion Butler shortly after his birth in 1954. Ms. Butler abused the boy in a sadistic manner cutting his legs, beating him with broomsticks and rubber hoses, and burning him with matches when he displeased her. (Pre-sentence Investigation Report dated March 1977; Report of Dr. Robert Coon, M.D. dated Nov. 28, 1972). At the age of nine, the petitioner

attempted suicide by hanging. In 1964, following the suicide attempt, a neuropsychiatric evaluation of petitioner conducted by Dr. Robert J. Donovan, M.D. diagnosed him as having Emotionally Unstable Personality and Moderate Mental Retardation (I.Q. = 40-55). Dr. Donovan's report documented a "[l]ifelong history of maladaptive behavior" manifested, inter alia, by "occasional retreat into excessive phantasy (sic) life" and recommended commitment to a mental hospital. (emphasis in original). The mental health diagnosis and recommendation were confirmed following psychiatric re-evaluation by Dr. Martin N. Robinson, M.D., who determined "[T]he lad is a product of an exceedingly squalid and deprived background. He behaves in a completely erratic and unpredictable manner . . . with poor attention span and poor concentration . . . he is mentally deficient, unskilled, uneducated" Dr. Robinson's report stated that petitioner was "possibly defective but probably retarded on emotional grounds."

Petitioner was institutionalized at the Eastern State Reform School and Hospital for six years beginning in 1964. Medical records for that time at Eastern State could not be found. He was released from that institution in 1970 at the age of fifteen and went to live with an aunt.

Between 1972 and 1975, petitioner was charged with a series of offenses including larceny of auto, burglary, attempted burglary, receiving stolen goods, criminal trespass, possession of a prohibited offensive weapon, possession of an instrument of a crime, terroristic threats, and possession of a controlled substance. He received varying sentences of incarceration and probation for convictions for some but not all of these charges. For sentencing purposes, a psychiatric evaluation was conducted on November 28, 1972 by Dr. Robert Coon, M.D., who diagnosed petitioner as having Schizoid Personality with passive aggressive tendencies and situational depression. Dr. Coon recommended that petitioner receive some kind of psychiatric

support. On May 22, 1974, psychiatrist Edward G. Guy, M.D. diagnosed petitioner as having Inadequate Personality with antisocial features. Dr. Guy noted petitioner's long history of inability to make even minimal adjustments to the social demands of communal life. On April 17, 1995, another psychiatrist, Dr. Richard B. Saul, M.D. diagnosed petitioner as being ego-impaired, with poor intellectual endowment, and having Inadequate Personality Disorder with antisocial features and schizoid elements.

In February of 1977, petitioner pled guilty to the crimes underlying this petition. A March 1977 Pre-sentence Report concluded "[Mr. Graham] appears to be of subnormal intelligence and his memory is very poor. He has difficulty in following any train of thought. He is polite but seems confused, worried and defensive during the interview. He is functionally illiterate and appeared to be somewhat withdrawn during our interview." The report recommended that petitioner receive psychiatric therapy; however, the record does not show that he received any. On September 16, 1977, following sentencing, Mr. Graham was sent to the State Correctional Institution at Graterford, Pennsylvania, for initial classification. The "Initial Classification Summary" states that at age 23, petitioner scored at the second grade level for academic ability and his intellectual ability was below average. The summary also describes petitioner as "primitive and detached, isolating himself from reality . . . [a]lthough he functions adequately in clearly defined situations, he [regresses] quickly under minor stress and pressure." Classification Summary from SCI-Graterford, at 5, September 17, 1977.

The instant petition was filed on April 23, 2001. The parties agree that, pursuant to AEDPA's one-year limitations period set forth in 28 U.S.C. § 2244(d)(1), petitioner's filing deadline was April 23, 1997. The sole issue before the court is whether the limitations period

should be equitably tolled. For the reasons that follow, the court finds that equitable tolling is justified under the circumstances presented.

IV. DISCUSSION

The third circuit has held that AEDPA's one-year limitations period is subject to equitable tolling in appropriate circumstances. Miller v. New Jersey State Dept. of Corrections, 145 F.3d 616 (3d Cir. 1998). In Miller, the court explained:

For the guidance of the district court, we observe that equitable tolling is proper only when the "principles of equity would make [the] rigid application [of a limitation period] unfair." Generally, this will occur when the petitioner has "in some extraordinary way ... been prevented from asserting his or her rights."

Id. at 618-19. (alterations in original) (citations omitted).

Recently, in Nara v. Frank, 264 F.3d 310 (3d Cir. 2001), the third circuit recognized that while mental incompetence is not a reason per se to toll a statute of limitations, id. at 320 (citing Lake v. Arnold, 232 F.3d 360, 371 (3d Cir. 2000)), where mental deficiency actually affects a petitioner's ability to file a timely habeas petition, equitable tolling is justified. Id. (citing Miller, 145 F.3d at 618). Nara's focus was not lack of information, which has been held insufficient to warrant equitable tolling, see Cortez v. Saffle, 2001 WL 276967, at *1 (10th Cir. Mar. 21, 2001) (unpublished), but, rather, the irremediable inability to access information and make use of it.

Although the third circuit has not set forth specific criteria for determining when equitable tolling is justified on the basis of mental deficiency affecting ability to make a timely filing, other circuit courts have held that "[t]he general federal rule is that a statute of limitations is tolled by reason of mental illness 'if the illness in fact prevents the sufferer from managing his affairs and thus from understanding his legal rights and acting upon them.' " Miller v. Runyon, 77 F.3d 189,

191 (7th Cir. 1996) (internal citations omitted).

In Calderon v. U.S. Dist. Court for Cent. Dist. of Cal., 163 F.3d 530, 541 (9th Cir.1998) (en banc), cert. denied, 525 U.S. 891 (1999), the ninth circuit held that tolling was appropriate where a habeas petitioner's mental incompetency prevented him from assisting his attorney in the ongoing habeas proceeding. In Biester v. Midwest Health Serv., Inc., 77 F.3d 1264, 1268 (10th Cir. 1996), the tenth circuit found that exceptional circumstances justifying equitable tolling may include "an adjudication of incompetence, institutionalization for mental incapacity, or other evidence that the individual is not "capable of pursuing his own claim." The fifth circuit in Fisher v. Johnson, 174 F.3d 710, 715 (5th Cir. 1999), has stated that mental incompetency "[c]ombined with forced confinement and medication, no access to legal materials, and the temporary loss of one's glasses, [presents a situation in which] a pro se petitioner . . . cannot pursue his legal rights."

By contrast, depression, a serious mental illness, has been held to be a common fact of prison life and therefore not, without more, a sufficient basis for tolling. Nowak v. Yukins, 2002 WL 2026196, at *2 (6th Cir. Aug 27, 2002) (unpublished). Similarly, in Worley v. Lytle, 221 F.3d 1354 (unpublished), (10th Cir. 2000), relief was denied where the petitioner had not been adjudicated incompetent, had not been institutionalized for mental impairment, had handled other legal matters and had been aware of the AEDPA time limits. Finally, in Collins v. Scurr, 230 F.3d 1362 (8th Cir. 2000), the eight circuit denied relief because the petitioner had made only "bald and unsupported assertions" relating to an instance of alleged mental incompetency that had occurred at a time remote to his § 2254 petition filing deadline.

This court gleans from the cases cited agreement, among the circuit courts that have considered the issue, that a determination of mental incompetence which has affected the ability

to make a timely filing under AEDPA must be premised on the totality of the petitioner's circumstances. Psychiatric diagnoses have no significance independent of their effects and effects cannot be assessed in a vacuum. The principle that a mental deficiency is not a per se grounds for tolling means that a court must consider all relevant factors in determining whether under all of the circumstances the deficiency had an effect on the ability to file. See Reupert v. Workman, 2002 WL 2005921, at *2 (10th Cir. 2002) (citing Miller v. Marr, 141 F.3d 976, 978 (10th Cir.1998) (individual circumstances must be considered but an inmate is required to diligently pursue claims)).

The seventh circuit's reasoning in Miller v. Runyon is illustrative. It rejects the argument that mental illness per se should toll a limitations period, calling it "tantamount to suggesting that there are no statutes of limitations in such cases, since most serious mental illnesses, such as mania, depression, and schizophrenia, are not curable. . . ." In reality, "[m]ost mental illnesses today are treatable by drugs that restore the patient to at least a reasonable approximation of normal mentation and behavior[] and [w]hen . . . illness is controlled [an individual] can work and attend to his affairs, including the pursuit of any legal remedies that he may have." 77 F.3d at 192; see Williams v. Price, 2002 WL 551037, at *5 (E.D. Mich. Mar. 29, 2002) (the fact that petitioner had been receiving psychotropic medications "weigh[ed] more in favor of his being able to function than not."). Thus, depending upon a variety of external factors, a particular mental illness, such as depression, may in some circumstances render an individual incapable of managing his affairs, while in other circumstances it may not.

In the instant matter, petitioner's expert, Dr. Bruce Mapes, a psychologist opined, based upon his examination of petitioner and the record history, that petitioner suffers from Mixed

Personality Disorder with schizoid and avoidant features which make him appear aloof and make it exceedingly difficult for petitioner to form relationships with others. He opined that the petitioner has borderline intelligence with regard to language function and is at high risk of functioning at an even lower level under emotional stress. As part of his evaluation, Dr. Mapes administered relevant portions of the Wechsler Adult Intelligence Scale-III test, regarded as the standard test by the American Association of Mental Retardation. A score in the fifth lowest percentile means that out of every 100 people his age who take the test petitioner's score was equal to or better than 5. The test scored petitioner's ability to define words at the fifth percentile; his ability to recognize abstract relationships between common objects or concepts at the second percentile; his ability to carry out simple mental arithmetic calculations at the fifth percentile; his background of general information at the sixteenth percentile; his ability to immediately repeat verbatim a short series of numbers at the thirty-seventh percentile; his ability to understand and articulate social rules and concepts or solutions to everyday problems at the fifth percentile; his overall verbal reasoning at the fifth percentile; and, his verbal comprehension at the fourth percentile.

Dr. Mapes concluded, to a reasonable degree of psychological certainty, that petitioner cannot read legal materials, but more importantly, that he lacked the level of cognitive functioning necessary to pursue legal remedies available to him during the relevant time period. According to Dr. Mapes, the fact that his cognitive deficiencies inhibit his ability to think abstractly and to comprehend basic legal concepts, combined with the effect of a psychiatric disorder which interferes with his ability to trust and actively seek the assistance of others, rendered him incapable of pursuing his rights.

Respondent's expert Dr. John O'Brien, a psychiatrist, agreed with Dr. Mapes that petitioner has borderline intelligence but disagreed that petitioner exhibited any schizoid or avoidant tendencies. Dr. O'Brien also agreed that petitioner's cognitive capacity, exhibited during childhood, would not have changed substantially from the time that he was nine years old, absent some intervening event or deterioration. (See Testimony of Dr. John O'Brien, Hearing Transcript, October 7, 2002, at 196). Nonetheless, Dr. O'Brien opined, based upon his examination of petitioner and records review, that petitioner was competent during the relevant time period and possessed the mental capacity to pursue legal recourse to protest any wrong suffered. Dr. O'Brien defined competency as "the capacity to receive and evaluate information effectively and then to process that information, and then act upon that information reasonably, rationally and coherently." (Testimony of Dr. O'Brien, Hearing Transcript, October 7, 2002, at 123). He characterized petitioner's difficulty in seeking the assistance of others as merely "being very selective about who he chose to assist him" and thus "a reflection of intact competency." Id. at 124. Dr. O'Brien concluded that petitioner had the ability to understand the nature and object of, and participate and assist in, legal proceedings, assess his areas of knowledge deficit and appropriately respond to them, and to comprehend and reasonably and appropriately respond to information presented to him. In response to a point raised by Dr. Mapes on the relevance of petitioner's inability to communicate effectively with authority figures even as a child as well as his difficulty interacting with his attorney at the conviction and sentencing stages, Dr. O'Brien opined that a great time period had lapsed between the referenced time periods and the habeas deadline and, thus, these were not relevant indicators of his capacity between April 1996 and April 1997. Dr. O'Brien pointed to "writings" of Mr. Graham nearer the relevant time period as

being more reliable indicators of capacity, which by that time had developed beyond his “tendency to be reticent.”

Having considered all of the evidence in this case, the court credits and adopts Dr. Mapes’ opinion as being consistent with prior psychiatric evaluations and with the basic principle that most mental illnesses and cognitive deficiencies persist throughout an individual’s life. See Miller v. Runyon, 77 F.3d at 192; (Testimony of Dr. John O’Brien, Hearing Transcript, October 7, 2002, at 196). Thus, petitioner’s deficiencies, diagnosed in his childhood, would have been consistently in play during the relevant filing time period.

Prior to April 1996, petitioner had been diagnosed with a variety of psychiatric disorders by five different psychiatrists. In 1964, Dr. Robert J. Donovan diagnosed him as having Emotionally Unstable Personality and Moderate Mental Retardation, noting a life-long history of maladaptive behavior and retreat into excessive fantasy life. Also in 1964, Dr. Martin N. Robinson diagnosed him as having Emotionally Unstable Personality and characterized him as mentally deficient. Medical records for the time that he spent in Eastern State School and Hospital are unavailable. However, in 1972, Dr. Robert Coon diagnosed him with Schizoid Personality with passive-aggressive tendencies and situational depression and recommended psychiatric support. In 1974, Dr. Edward Guy diagnosed him as having Inadequate Personality with antisocial features and noted petitioner’s long history of inability to make the most minor adjustments to the demands of family life and the community. On April 17, 1995, Dr. Richard B. Saul diagnosed him as ego-impaired with Antisocial Personality Disorder with antisocial features and schizoid elements.

These diagnoses are consistent with the level of incapacity described in various

evaluations by non-psychiatrists and non-psychologists. See (May 1984 Evaluation by Ellis Grayson, Group Work Program Supervisor for the Philadelphia Youth Study Center) (describing petitioner upon commitment to the Eastern State School and Hospital as ultra-passive, never taking the initiative in seeking companions, nervous, tense and full of anxieties when confronted by adults in positions of authority and noting that “[i]t is only after the relationship between himself and an adult has been sustained for a considerable period of time that Robert manages to relax and respond with a degree of open spontaneity”); (March 1977 Pre-sentence Report) (describing petitioner as of subnormal intelligence, with poor memory, unable to follow any train of thought, confused, worried, defensive, functionally illiterate and withdrawn and recommending psychiatric therapy); (September 1977 Classification Summary/SCI-Graterford) (describing petitioner at age 23, scoring at the second grade level for academic ability, intellectual ability below average, primitive and detached, isolating himself from reality, functioning adequately only in clearly defined situations, regressing quickly under minor stress and pressure).

Despite the varying conclusions drawn by the experts at the hearing, they were in agreement regarding certain fundamental aspects of petitioner’s condition. Both experts testified that petitioner functions intellectually in the borderline to low-average range (an I.Q. of roughly 70-85). They agreed that schizoid features or schizoid traits manifest themselves in individuals appearing too serious; in Dr. O’Brien’s terms, “[n]ever relaxed enough; never interact or get close to people.” Although Dr. O’Brien did not agree that petitioner “came across” that way, (Testimony of Dr. O’Brien, Hearing Transcript, October 7, 2002, at 112), he did agree that cognitive impairments, serious mental illnesses and neuropsychological limitations are life-long conditions and, absent deterioration through age or other pathology, remain consistent through

adulthood. (See Testimony of Dr. John O'Brien, Hearing Transcript, October 7, 2002, at 196). Dr. O'Brien conceded that petitioner's level of cognitive functioning would not have changed substantially from the time that he was nine years old.

The experts further agreed that petitioner did not fill out the habeas forms filed on his behalf. (See id. at 118-19 (Dr. O'Brien's acknowledgment that petitioner would not have selected those words or spelled them appropriately)). Dr. O'Brien testified that Mr. Graham would have had difficulty reading, but more importantly, "understanding all of that, particularly references to – to the United States Code, for example, and some of the language used" and "would have required help." Id. In light of petitioner's diagnosed history of mental and cognitive incapacity, this court's own observations, and the points of agreement among the experts, the court finds Dr. Mapes' diagnosis and opinion of hampering mental condition more persuasive and reliable.

As a final argument, counsel for the Commonwealth points out that petitioner was the named party in a 42 U.S.C. §1983 suit filed September 18, 1996, during his AEDPA limitations period and submitted certain prison grievance or request forms close to the limitations period (the "other writings" referenced by respondent's expert, Dr. O'Brien) and cites a number of tenth circuit and district court cases for the proposition that mental incapacity can never justify equitable tolling where the party who seeks the tolling has pursued other legal claims during the period of his or her alleged mental incapacity.¹ (Respondent's Brief in Opposition to the Petition for Writ of Habeas Corpus at 17 (citing Reupert v. Workman, 2002 WL 2005921 (10th Cir. 2002); Worley v. Lytle, 221 F.3d 1354 (10th Cir. 2000) (Table); Williams v. Price, 2002 WL

¹Although counsel for the Commonwealth points to a number of other inmate suits in which petitioner joined at different times, the court notes that if they were relevant, the court's conclusion regarding petitioner's involvement in those would be the same.

551037 (E.D. Mich. 2002); Hennington v. Johnson, 2001 WL 210405 (N.D. Tex. 2001); Torres v. Miller, 1999 WL 714349 (S.D.N.Y. 1999)). Counsel's argument is flawed. Ability to sign one's name does not automatically equate to a conclusion of understanding of the document to which the name is affixed. Courts that have considered the impact of the filing of other papers during the relevant time period have either considered that as only one factor in the ultimate determination or have not addressed the level of the petitioner's actual involvement in the preparation and filing of documents.

In Reupert, 2002 WL 2005921, at *2, the tenth circuit, without discussion, merely stated "[T]he record indicates that Mr. Reupert was represented and pursuing legal remedies during the pertinent time period." In Worley, in an unpublished two-page opinion, the same court denied relief not merely on the basis of other pleadings, but on the basis of a combination of factors including that the petitioner 1) had not been adjudicated incompetent; 2) had not been institutionalized for his mental impairment; 3) had handled, with assistance, other legal matters which required action during the limitations period; and, 4) had been aware of the AEDPA time limits. 221 F.3d 1354, at *2.

The district court cases upon which counsel for the Commonwealth relies are similarly distinguishable. In Williams, the court did not render its decision merely on the basis of the petitioner's other filings, explaining that in addition, the petitioner: 1) had not clearly indicated the dates that he had been hospitalized for his mental illnesses; 2) did not allege that the conditions in the mental hospitals in which he was placed were so restrictive that they prevented him from preparing his state post-conviction motion or his habeas petition; and, 3) had been receiving psychotropic medications which "weigh[ed] more in favor of his being able to function than not."

2002 WL 551037, at *5. Similarly, the court's denial of relief in Hennington was based not solely on the petitioner's other filings but also on the fact that 1) the petitioner's conclusory allegations that he was insane were insufficient to establish that he had been rendered unable to pursue his legal rights; and, 2) a Judgment of Competency had been entered by the trial court. 2001 WL 210405, at *4. Finally, in Torres, the court denied relief on the basis of the petitioner's 1) conclusory contentions of temporary insanity and physical ailments; and, 2) two pre-plea psychiatric examinations by two different psychiatrists which had found Torres competent and able to assist in his own defense. 1999 WL 714349, at *8. The Torres court never addressed the issue of other filings.

Upon questioning by this court, it became apparent that petitioner's involvement in the actions to which he was a party was limited to signing his name to documents prepared by other inmates because he was "with the rest of the people that was writ this." (Testimony of Robert Graham, Hearing Transcript, Oct. 7, 2002, at 249). Dr. Mapes explained that it is common for persons with petitioner's mental deficiencies to experience great difficulty in communicating effectively with others and therefore to simply agree with or go along with statements made by others. One particular suit, drafted but never filed by a group of inmates of the Muslim faith, was tantamount to a religious diatribe. When petitioner was asked why he was suing the named defendant, the exchange was as follows:

Q: Something to do with the Muslim faith.

A: Oh, you have to put the new papers like that, so you have to give a six-month statement of your transac – of your money for the last – past six months.

Q: Right.

A: And you have to put that in that way in order to get it.

Q: How did you find out about that?

A: Mr. Logan told me how to, you know what I mean, put the request slip in, you know what

I mean, and this is what you put on a request slip. And, then from that, they send you your six-month statement, 'cause you're going to need that.

* * *

- Q: Uh-huh. Next page. Do you remember asking for a million dollars? Bottom of the page, "I want \$1 million from the defendant."
- A: Okay. That's – yeah, that's what they put down.
- Q: And other employees who work at the Institute of Islamic Information and Education. What do you know about [the named defendant]?
- A: Nothing.
- Q: Nothing? Why did you sign this if you don't know anything about [the named defendant]?
- A: I was with the rest of the people that writ this.
- Q: I only see your signature.
- A: But, they send in the same thing.
- Q: Well, what did [the named defendant] do to you?
- A: Nothing.
- Q: Why are you suing [the named defendant] if she didn't do anything to you?
- A: I'm really not suing her. I told you this is how that you had to get your six-month restatement.
- Q: Do you know – do you know what this is? Do you know what you're asking for from [the named defendant]?
- A: No.
- Q: Well, why did you sign it if you don't know what it is? Why did you sign –
- A: I was –
- Q: – asking for –
- A: – just with –
- Q: – a million dollars?
- A: I was just being with the rest of the crew.

(Testimony of Robert Graham, Hearing Transcript, Oct. 7, 2002, at 247-49).

Having observed the foregoing, the court is persuaded that petitioner had no understanding of the document to which his name was affixed. Rather, he was seeking an accounting of the funds in his prison account. The fact that only petitioner's name appeared on the document illustrates the ease with which petitioner was probably manipulated by fellow inmates. Courts should avoid elevating form over substance. The evidence in this case does not demonstrate the knowing or affirmative pursuit of legal remedies.

This court's decision finds support in the Supreme Court's decision in Lewis v. Casey,

518 U.S. 343 (1996). In Lewis, in the context of the right of access to courts, the Court held that when an illiterate inmate or a non-English-speaking inmate “shows that an actionable claim which he desired to bring has been lost . . . because th[e] capability of filing suit” through meaningful access to legal materials or persons trained in the law has been denied, he demonstrates a violation of his federal constitutional rights. Id. at 356-57 (citing Bounds v. Smith, 430 U.S. 817, 828 (1977)). The Court stressed that “it is *that* capability [of filing suit], rather than the capability of turning pages in a law library, that is the touchstone.” Id. (emphasis added). As in Lewis, in this case, it is Robert Graham’s ability to file a timely petition, and not his ability to sign his name to a piece of paper, that is the touchstone.

Having found that petitioner’s “filing” of various pleadings around the relevant time period is not dispositive of the competency issue, it would be incongruous for the court to credit Dr. O’Brien’s opinion that certain prison grievances or requests “written” by petitioner between 1997 and 2000 indicate an ability to “engage in a – a legalistic type process within the – the jail system,” and show a level of increased capacity sufficient to allow him to pursue federal habeas relief. (Testimony of Dr. O’Brien at 140). Initially, the court notes that that opinion is inconsistent with his agreement upon cross examination that petitioner’s cognitive capacity would have remained substantially unchanged from the time that he was nine.

More importantly, petitioner’s submission of these filled-out forms is not persuasive as a measure of his capacity for the same reasons that his court filings are not persuasive. Specific examples of petitioner’s lack of understanding of the accuracy or inaccuracy of words or of the consequences of choosing certain words exist in the record. In one particular writing, petitioner asked the prison psychiatrist for help because he was about to get out of the “hole” and did not

want to be placed in a cell with another inmate. Petitioner wrote that he might not be able to control himself and would likely physically hurt the other inmate. Petitioner did not understand that this would be construed as a threat against another person and that he would be punished.

In response to specific questions by the court regarding the language used by him on some of the forms, petitioner could not explain the meaning of words that he had used. Instead, he explained that he would sometimes find words in magazines or letters that he had received which sounded like they made sense and he would merely copy them. On occasion, other inmates would write down his name and things that he said had happened to him and he would copy that onto a grievance form. (See Testimony of Robert Graham, Hearing Transcript, October 7, 2002, at 226). As to his use of the word “rectify” on a grievance form, the court asked petitioner if he knew its meaning. Petitioner stated that he might have known the word in the past but at present had no idea of its meaning. He thought he might have gotten it from a magazine or from television. Id. at 263. When pressed by counsel for the Commonwealth regarding his ability to remember the meaning of the word “rectify” if he were alone in the room, petitioner agreed “I’d probably maybe understand it.” Id. at 264. The court does not find that petitioner would have been able to define the word “rectify” if the courtroom had been emptied. Dr. Mapes’ testimony indicated that individuals with the petitioner’s mental deficiencies are extremely suggestible and will commonly go along with statements made by others, particularly persons perceived to be in positions of authority. The Commonwealth counsel’s cross examination of petitioner tended to prove that point.

Finally, the court is unpersuaded by the testimony of Dr. O’Brien when he states, in response to a hypothetical question, that even assuming that the various pleadings filed in

petitioner's name were in fact prepared and filed by other individuals, his conclusion regarding petitioner's capacity to initiate appropriate pleadings or proceedings in a timely fashion is unaffected. When questioned by the court as to why he did not ask others, such as library staff, for help prior to developing a relationship with fellow inmate Nick Logan, petitioner responded "I didn't like the guys there. I didn't trust them." (Testimony of Robert Graham, Hearing Transcript, Oct. 7, 2002, at 221). While Dr. O'Brien characterizes this as petitioner being selective about who helps him, the court adopts the testimony of Dr. Mapes on this point which views this as a manifestation of petitioner's difficulty in trusting and seeking the assistance of others as a result of mental deficiency. Dr. Mapes' conclusions are essentially consistent both with the court's observations and with prior evaluations of petitioner, including the evaluation conducted in 1972 by Dr. Robert J. Coon, M.D. who diagnosed petitioner with Schizoid Personality with passive-aggressive tendencies and situational depression and with the observations of Ellis Grayson regarding petitioner's inability to respond to other persons until a relationship had been maintained for a substantial period of time. Dr. Mapes' conclusions are also consistent with the principle that the specific traits of mental illness and cognitive dysfunction remain consistent throughout life. The court finds that petitioner's inability to engage in the abstract reasoning necessary to understand basic legal concepts, combined with his diagnosed psychiatric disorders and obvious functional illiteracy would have made it impossible for him to file or to seek assistance in filing a habeas petition between April 1996 and April 1997.

It took petitioner five years to be able to communicate to another inmate his desire to challenge his sentence in this court. It was this inmate, Nick Logan, who actually prepared the petition signed by petitioner and filed in this court in April of 2001, after eliciting the relevant

facts from petitioner. The petitioner and Mr. Logan worked together in the prison kitchen and their relationship developed over a rather lengthy period of time. The record indicates that Mr. Logan prepared and filed all of petitioner's legal pleadings beginning with his 2001 PCRA petition and that petitioner's only role was to make photo copies. Both a "Response to Respondent's Response to Petition for Writ of Habeas Corpus" and an "Objection to Report and Recommendation" are actually signed by "Nick Logan, on behalf of Robert Graham."

V. CONCLUSION

On the basis of the above, the court finds that in this case equitable tolling is justified by sound legal principles and the interest of justice. Accordingly, the petition in the above-captioned matter shall be treated as timely filed. An appropriate order follows.

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

ROBERT GRAHAM : CIVIL ACTION

:

v. :

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KENNETH KYLER, et al. : NO. 01-1997

:

ORDER

AND NOW, this ____ day of October, 2002, it is hereby ORDERED that the statute of limitations for the filing of the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the above-captioned matter is equitably tolled.

The petition shall be treated as timely filed.

BY THE COURT:

JAMES T. GILES C.J.

copies by FAX on

to