

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

CLIFTON WILLIAMS,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
THOMAS LAVAN, et al.,	:	
Respondents.	:	No. 03-0424

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**AUGUST           , 2003**

Presently before the Court are the Report and Recommendation of United States Magistrate Judge Jacob B. Hart and objections thereto filed by pro se Petitioner Clifton Williams ("Petitioner"), who is currently incarcerated at the State Correctional Institute at Dallas, Pennsylvania. Petitioner was convicted of murder in the first degree and possession of an instrument of crime, and sentenced to an aggregate term of life imprisonment for the convictions.

On January 20, 2003, Petitioner filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 with this Court. In accordance with 28 U.S.C. § 636 and Local Rule of Civil Procedure 72.1, the Court referred Petitioner's habeas corpus petition for a Report and Recommendation to Magistrate Judge Hart, who, on June 5, 2003, recommended that this Court dismiss Petitioner's petition as untimely. On June 16, 2003, Petitioner sought an enlargement of time to file his objections to the Report and Recommendation, which this Court granted, and, on August 8, 2003, Petitioner timely filed his objections.

For the following reasons, this Court **OVERRULES** Petitioner's objections, **APPROVES** and **ADOPTS** Magistrate Judge Hart's Report and Recommendation, and **DISMISSES** Petitioner's habeas corpus petition as untimely.

#### I. BACKGROUND

On May 30, 1986, following a jury trial in the Court of Common Pleas for Philadelphia County before the Honorable George J. Ivins, Petitioner was convicted of murder in the first degree and possession of an instrument of crime. On June 24, 1987, Petitioner was sentenced to life imprisonment for the murder conviction and to a concurrent term of one to two years imprisonment for the weapons offense. Petitioner filed an appeal to the Superior Court of Pennsylvania, which affirmed the judgment of sentence on March 23, 1988. Commonwealth v. Williams, 541 A.2d 1156 (Pa. Super. Ct. 1988) (Table). Petitioner did not seek review by the Supreme Court of Pennsylvania.

On April 4, 1989, Petitioner filed a petition pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. Ann. §§ 9541-46. The PCRA court dismissed the petition on the same day, stating that Petitioner was ineligible for relief since, at that time, he was incarcerated in New Jersey on another matter. Petitioner did not appeal this decision.

On January 16, 1997, Petitioner filed a second PCRA petition, which was dismissed on September 22, 1997. Petitioner did not timely appeal that decision.

On November 13, 1997, Petitioner filed a petition for an extension of time to file a notice of appeal to the Pennsylvania Superior Court, which the PCRA court viewed as a third PCRA petition and appointed counsel to represent Petitioner in that matter. On September 17, 1998, the PCRA court denied Petitioner's petition, which decision was affirmed by the Pennsylvania Superior Court on October 13, 1999. Commonwealth v. Williams, 748 A.2d 779 (Pa. Super. Ct. 1999) (Table). The Pennsylvania Supreme Court denied allocatur on February 17, 2000. Commonwealth v. Williams, 751 A.2d 190 (Pa. 2000).

On March 9, 2001, Petitioner filed a fourth PCRA petition, which was dismissed as untimely on August 8, 2001. Petitioner appealed to the Superior Court which affirmed the PCRA court's decision on June 20, 2002. Commonwealth v. Williams, 806 A.2d 468 (Pa. Super. Ct. 2002) (Table). The Pennsylvania Supreme Court denied allocatur on December 24, 2002. Commonwealth v. Williams, 815 A.2d 633 (Pa. 2002) (Table).

On January 29, 2003, Petitioner filed the instant petition for writ of habeas corpus in this Court. The District Attorney asserted that the petition is time-barred and should be dismissed. This Court referred the matter for a Report and

Recommendation to Magistrate Judge Hart, who recommended that the instant petition be dismissed as untimely. Petitioner filed his objections to the Report and Recommendation, which this Court addresses below.

## II. DISCUSSION

This Court reviews de novo those portions of the Magistrate Judge's Report and Recommendation to which specific objections have been made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In his objections, Petitioner alleges that the documentation submitted by Respondents was "full of errors and misleading information" and "failed to provide the Magistrate Judge with the requisite facts needed to give petitioner's habeas claims a fair and meaningful preliminary review." See Pet.'s Opp. at 1-2. Although Petitioner fails to state specific objections and the reasons therefor, it appears to the Court that Petitioner is chiefly contending that he is entitled to equitable tolling of the statute of limitations applicable to his federal habeas petition.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") sets a one-year statute of limitations period within which a petitioner may apply for a writ of habeas corpus challenging state court action. 28 U.S.C. § 2244(d); Morris v. Horn, 187 F.3d 333, 337 (3d Cir. 1999). Although Petitioner's

conviction in state court became final on April 22, 1988, prior to the enactment of AEDPA, the United States Court of Appeals for the Third Circuit has construed AEDPA's statute of limitations to allow prisoners whose convictions became final prior to AEDPA's effective date of April 24, 1996, a one-year period following the effective date in which to initiate a federal habeas corpus petition. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). This one-year period begins to run from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review," however, it may be tolled when a properly filed petition for collateral review is pending in state court. 28 U.S.C. § 2244(d)(1)(A) and (d)(2).

On January 16, 1997, 267 days after AEDPA's effective date, Petitioner filed a PCRA petition, which filing tolled AEDPA's limitations period. That petition was dismissed on September 22, 1997. Petitioner failed to file a timely appeal, and the limitations period again began to run on October 22, 1997, when the time for seeking an appeal expired. See Pa. R. App. P. 1113 (requiring petition for allowance of appeal to be filed within 30 days of Superior Court's order).

On November 13, 1997, 22 days after the limitations period again began to run, Petitioner filed a petition for an extension of time to file an appeal to the Pennsylvania Superior Court. The PCRA court treated this as a third PCRA petition, which again

tolled the one-year limitations period. The state court completed consideration of this third PCRA petition on February 17, 2000, at which time the limitations period again began to run.

At this point, 289 days had passed, and Petitioner had 77 days remaining to file a timely habeas petition in this Court, which would have been May 4, 2000.<sup>1</sup> Indeed, the one-year statute of limitations ran out well before Petitioner filed his current federal habeas petition on January 29, 2003.<sup>2</sup>

While Petitioner did not suggest in his habeas petition that he was entitled to equitable tolling of AEDPA's statute of limitations and Magistrate Judge Hart nevertheless determined that Petitioner was not entitled to equitable tolling, Petitioner now contends, in his objections, that his claims should not be barred pursuant to equitable tolling principles. After careful and independent review of Petitioner's objections, we conclude that he is not entitled to equitable tolling, and his petition

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<sup>1</sup> Since the year 2000 was a leap year, wherein February consisted of 29 instead of 28 days, we are granting Petitioner an additional day in the calculation of the limitations period.

<sup>2</sup> Petitioner filed a fourth PCRA petition on February 26, 2001. The fourth petition would not have served to toll the limitations period since it was dismissed as untimely and, thus, not considered properly filed under 28 U.S.C. § 2244. See Merritt v. Blaine, 326 F.3d 157, 159 ("We hold that an untimely application for state post-conviction relief by a petitioner, who sought but was denied application of a statutory exception to the PCRA's time bar, is not 'properly filed' under 28 U.S.C. § 2244(d)(2).")

must be dismissed as untimely.

The one-year filing deadline contained in 28 U.S.C. § 2244(d)(1) can be subject to equitable tolling:

only when the principle 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. The petitioner must show that he or she exercised reasonable diligence in investigating and bringing the claims. Mere excusable neglect is not sufficient.

Miller v. New Jersey Dept. of Corr., 145 F.3d 616, 618 (3d Cir. 1998). The Third Circuit has enumerated four circumstances warranting equitable tolling: (1) if the defendant has actively misled the plaintiff; (2) if the plaintiff has in some extraordinary way been prevented from asserting his rights; (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum; or (4) where the claimant received inadequate notice of his right to file suit, a motion for appointment of counsel is pending, or where the court has misled the plaintiff into believing that he had done everything required of him. Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999). The Third Circuit has also cautioned that "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." United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998); see also Seitzinger v. Reading Hosp. & Med. Ctr., 165 F.3d 236, 239 (3d Cir. 1999) ("The law is clear that courts must be sparing in

their use of equitable tolling.”)

In the instant case, Petitioner offers the following reasons in support of his equitable tolling argument: (1) prison personnel misplaced a box containing Petitioner's legal materials during Petitioner's transfer to the Dallas, Pennsylvania correctional facility, but that box was returned sometime during the summer of 1996; (2) Petitioner's January 16, 1997 PCRA petition should toll the statute of limitations until February 17, 2000, and the running of the limitations period beginning on October 22, 1997 is an error based on Respondents' misrepresentations of facts; (3) the filing of another PCRA petition on November 13, 1997 should not have been construed as a third PCRA petition; (4) "exceptional circumstances" relating to Petitioner's efforts to locate exculpatory evidence existed between February 17, 2000 and February 17, 2001; (5) the PCRA petition filed on January 16, 1997 should be construed as his first PCRA petition, and a subsequently filed PCRA petition should be construed as an amendment to that petition rather than as a separate petition; and (6) the instant federal habeas petition was timely filed as it was placed in the outgoing mailbox at the Dallas, Pennsylvania correctional facility on January 18, 2003, 23 days after Petitioner met the exhaustion requirements on the claims presented in his habeas petition.

Despite these numerous and often erroneous contentions,

Petitioner does not provide the Court with sufficient reasons warranting equitable tolling of AEDPA's statute of limitations. Even if Petitioner is correct in his recollection of events during the summer of 1996, at which time Petitioner claims his box of legal materials was returned by prison officials, it is clear that Petitioner was not, in some extraordinary way, prevented from filing a petition for collateral relief, as he was fully capable of filing a PCRA petition on January 16, 1997. Petitioner's allegation that Respondents misrepresented facts in recounting the procedural history of Petitioner's case must also be discounted as the procedural history set forth above in this Memorandum, which is substantially the same as that contained in Magistrate Judge Hart's Report and Recommendation, was compiled from the unpublished Pennsylvania state court opinions that Petitioner himself supplied to this Court in support of his objections. See e.g., Commonwealth v. Williams, No. 2778 EDA 2001, slip op. at 1-2 (Pa. Super. Ct. June 20, 2002); Commonwealth v. Williams, No. C.P. 8507-3649, slip op. at 1-7 (Phila. Ct. Common Pleas Oct. 24, 2001). Moreover, Petitioner's statement, devoid of any factual detail, that "exceptional circumstances" existed from February 17, 2000 to February 17, 2001 to prevent him from obtaining exculpatory evidence, without more, cannot be credited to justify the sparing use of equitable tolling. Finally, we will not disturb the Pennsylvania courts'

characterizations of his previously filed PCRA petitions. See Duncan v. Morton, 256 F.3d 189, 196 (3d Cir. 2001) (“In conducting a habeas analysis, we must afford state courts’ factual findings a presumption of correctness, which the petitioner can overcome only by clear and convincing evidence.”)

### **III. CONCLUSION**

Petitioner has failed to demonstrate that the instant federal habeas corpus petition is timely filed or that he is entitled to equitable tolling of AEDPA’s statute of limitations and, therefore, we need not address the merits of Petitioner’s claims. For these foregoing reasons, this Court **OVERRULES** Petitioner’s objections, and **APPROVES** and **ADOPTS** Magistrate Judge Hart’s Report and Recommendation as supplemented by this Memorandum. Accordingly, Petitioner’s Petition for Writ of Habeas Corpus is **DISMISSED**.

IN THE UNITED STATES DISTRICT COURT  
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O R D E R

**AND NOW**, this                    day of August, 2003, upon careful and independent consideration of United States Magistrate Judge Jacob P. Hart's Report and Recommendation (Doc. No. 13) and Petitioner's Objections thereto (Doc. Nos. 16 and 17), it is **ORDERED** that:

1. Petitioner's Objections to Magistrate Judge Hart's Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Hart's Report and Recommendation is **APPROVED** and **ADOPTED** as supplemented by the foregoing memorandum.
3. Petitioner's Petition for Writ of Habeas Corpus is **DISMISSED**.
4. Because Petitioner has failed to make a substantial showing of the denial of a constitutional right, there is no basis for the issuance of a certificate of appealability.

BY THE COURT:

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JAMES MCGIRR KELLY, J.