

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

STEVIE BOYD :
 :
 v. : CIVIL ACTION
 :
 FRANK D. GILLIS, ET AL. : NO: 02-8034

MEMORANDUM

October 25, 2004

Padova, J.

Before the Court is Stevie Boyd's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. On June 28, 2004, Magistrate Judge Charles B. Smith filed a Supplemental Report and Recommendation that recommended denying the Petition in its entirety. On July 21, 2004 Petitioner filed Objections to the Supplemental Report and Recommendation. For the reasons that follow, the Court overrules Petitioner's Objections, adopts the Report and Recommendation, and denies the Petition in its entirety.

I. BACKGROUND

On February 27, 1998, Petitioner entered a negotiated plea of guilty but mentally ill to two counts of first degree murder before the Honorable Carolyn Engel Temin in the Court of Common Pleas of Philadelphia County. In exchange for Petitioner's agreement to plead guilty, the Commonwealth agreed not to seek the death penalty. On May 1, 1998, Petitioner was sentenced to two consecutive life terms. Petitioner did not appeal his sentence and conviction, however, he filed for leave of court to withdraw his guilty plea on May 26, 1998. On August 27, 1998 Petitioner withdrew his Petition to Withdraw Guilty Plea.

On December 18, 2001, Petitioner filed a collateral petition for relief under the Pennsylvania Post Conviction Relief Act, (the "PCRA") asserting ineffective assistance of trial counsel and abuse of discretion by the trial court judge. On April 25, 2002, Petitioner's appointed counsel attempted to withdraw the PCRA petition, stating that the petition was untimely and the court therefore lacked jurisdiction to reach the merits. The State Court denied Petitioner's request to withdraw the PCRA petition and, on July 31, 2002, dismissed the petition for untimeliness. Petitioner did not appeal this dismissal.

On October 10, 2002, Petitioner, acting *pro se*, filed the present Petition for a Writ of Habeas Corpus (the "Petition"). Petitioner raises two grounds for relief, ineffective assistance of trial counsel and abuse of discretion by the trial court judge. Specifically, Petitioner claims that his trial counsel provided ineffective assistance by: (1) advising him to plead guilty to two life sentences for first degree murder although Petitioner was mentally ill at the time; (2) failing to request a mental competency hearing before advising Petitioner to plead guilty; and (3) failing to present an insanity defense. Petitioner further claims that the trial court judge abused her discretion by accepting Petitioner's guilty plea while Petitioner was under medication and mentally ill.

On November 14, 2002, the Petition was referred to Magistrate

Judge Charles B. Smith for a Report and Recommendation pursuant to 28 U.S.C. § 636. On March 20, 2003, Magistrate Judge Smith filed a Report and Recommendation recommending that the Petition for Writ of Habeas Corpus be dismissed on timeliness grounds. Petitioner filed objections to the Report and Recommendation on April 30, 2003. Upon consideration of the Report and Recommendation and Petitioner's written objections thereto, this Court, by Order of June 27, 2003, remanded the Petition to Magistrate Judge Smith for a hearing to determine the effect, if any, of Petitioner's alleged mental illness on the equitable tolling of the statute of limitations.

On July 31, 2003, Magistrate Judge Smith appointed Dennis Caglia, Esquire as counsel for Petitioner. Mr. Caglia subsequently met with Petitioner, his treating psychiatrist, and his caseworkers, and reviewed Petitioner's mental health records. Magistrate Judge Smith also appointed Dr. Pogos H. Voskanian as an expert to conduct an independent review of Petitioner's medical and/or psychiatric records from May 1998 through May 1999. Magistrate Judge Smith held an evidentiary hearing on March 2, 2004. On June 25, 2004, Magistrate Judge Smith issued a Supplemental Report and Recommendation (the "SR&R"), recommending that the Petition be denied and dismissed as untimely. On June 21, 2004, Petitioner filed timely objections to the SR&R.

II. LEGAL STANDARD

Where a habeas petition has been referred to a magistrate judge for a Report and Recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made . . . [The court] may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1994).

The instant Petition was filed pursuant to 28 U.S.C. § 2254, which allows federal courts to grant habeas corpus relief to prisoners "in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.A. § 2254. The Antiterrorism and Effective Death Penalty Act of 1996, ("AEDPA"), applies to this action, which was filed after April 24, 1996. P.L. 104-132, 110 Stat. 1214. See Lindh v. Murphy, 521 U.S. 320, 326-27 (1997). The AEDPA provides in relevant part 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.

28. U.S.C.A. § 2244(d)(1). A judgment becomes final at the

conclusion of direct judicial review or upon the expiration of the time for filing for review, including the time for filing a petition for writ of certiorari in the United States Supreme Court. See Kapral v. United States, 166 F.3d 565, 575 (3d Cir. 1999). Under Pennsylvania law, a notice of appeal must be filed within thirty days after the entry of the order from which the appeal is taken. Pa. R. App. P. 903(a).

III. DISCUSSION

Petitioner objects to the SR&R on the grounds that Magistrate Judge Smith erred in finding that Petitioner did not suffer from a mental illness which equitably tolled the statute of limitations provided by the AEDPA.

Petitioner was sentenced on May 1, 1998, and did not file a direct appeal. Petitioner's judgment, therefore, became final when the time for filing a notice of appeal expired on May 31, 1998. See 28 U.S.C.A. § 2244(d)(1). Accordingly, the one-year statute of limitations for filing a petition for writ of habeas corpus under the AEDPA began to run from May 31, 1998.¹ Petitioner, however,

¹Petitioner argues that, for purposes of this decision, the Court should adopt September 25, 1999, thirty days after he withdrew his motion to withdraw his guilty plea, as the date on which his right to file a petition under 28 U.S.C. § 2254 began to run. That motion, however, was filed well after Petitioner's time to request post-conviction relief had expired. See Pa. R. Crim. P. 720(1) (written post-sentence motion shall be filed no later than 10 days after imposition of sentence). State collateral petitions that are found to be untimely are not properly filed for purposes of tolling the AEDPA, and thus can not be taken into account in a determination of the applicable filing deadlines. Brown v.

did not file the Petition until October 23, 2002, well over three years after the statutory time period for doing so had expired.

It is well-settled in the Third Circuit that the AEDPA's statute of limitations is not jurisdictional in nature and, therefore, is subject to equitable tolling. Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 618 (3d Cir. 1998). In Miller, the United States Court of Appeals for the Third Circuit explained 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. The petitioner must show that he or she exercised reasonable diligence in investigating and bringing [the] claims. Mere excusable neglect is insufficient.

Id. at 618-19, (citations omitted). Accordingly, equitable tolling should be granted only when Petitioner can "demonstrate a causal relationship between the extraordinary circumstances on which the claim for equitable tolling rests and the lateness of his filing." Brown, 322 F.3d at 733 (citing Valverde v. Stinson, 224 F.3d 129, 134 (2d Cir. 2000)).

Mental incompetence may constitute an extraordinary circumstance for purposes of tolling the statute of limitations when a person's mental deficiency affects his ability to file a

Shannon, 323 F.3d 768, 776 n.5 (3d Cir. 2003).

timely habeas petition. Nara v. Frank, 264 F.3d 310, 320 (3d Cir. 2001). A statute is tolled due to mental incompetence "if the illness in fact prevents the sufferer from managing his affairs and thus from understanding his legal rights and acting upon them." Graham v. Kyler, No. 01-1997, 2002 WL 32149019, at *3 (E.D. Pa. Oct 31, 2002) (citing Miller v. Runyon, 77 F.3d 189, 191 (7th Cir. 1996)). In making this determination, a court must consider the totality of the petitioner's circumstances. Id. Depression has been found to be a common fact of prison life and is, without more, insufficient to justify equitable tolling. Graham, 2002 WL 32149019 at *3 (citations omitted). Similarly, the use of psychotropic medications can weigh against equitable tolling, because frequently the treatment of mental illness with drugs will "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." Miller, 77 F.3d at 192; see also Graham, 2002 WL 32149019 at *4.

This Court has noted that "some recent equitable tolling decisions have more narrowly defined mental illness as the inability to even assist others in the preparation of the habeas petition." United States v. Harris, 268 F. Supp. 2d 500, 507 n.10 (E.D. Pa. 2003) (citations omitted); McFarland v. Cockrell, No. 3-02-901-M, 2002 WL 31360395, at *3 (N.D. Tex. Oct. 15, 2002)). In

determining whether a petitioner's mental illness prevented him or her from filing a timely petition for writ of habeas corpus, the court must look to that period of time during which petitioner should have filed the petition. Clapsadl v. Shannon, No. 02-4621, 2003 WL 22871663, *2 (E.D. Pa. 2003).

Petitioner argues that his mental illness, combined with several prison transfers when he was first committed to state prison, "prevented him from receiving and evaluating information effectively, from processing information and acting upon the information reasonably, rationally and coherently." (Def. Obj. to SR&R at 8-9.) Upon careful consideration of Petitioner's medical records and psychiatric evaluations relating to the time period during which Petitioner should have filed his Petition, as well as the transcript of the Hearing held on March 2, 2004, this Court concludes that Petitioner's circumstances do not warrant the equitable tolling of the AEDPA's statute of limitations.

Despite the voluminous evidence submitted on Petitioner's mental health status, the only psychiatric reports which specifically address Petitioner's competency to pursue legal remedies and understand legal procedures are his original state court competency evaluations. The first evaluation, conducted on November 6, 1997 by Dr. Pietro Miazzo, determined that Petitioner was, at that time, not competent to stand trial. (Medical and Psychological Records submitted for Hearing on March 2, 2004 (the

"Records") at 975-76.) Several months later, on February 6, 1998, Dr. John S. O'Brian II examined Petitioner and, in a detailed medical report, concluded that "notwithstanding his personality disorder and whatever psychiatric condition he may have, he is currently competent to stand trial." (Records at 981.)

Dr. O'Brian II re-examined petitioner on April 6, 1998, prior to his sentencing. Dr. O'Brian reported that Petitioner was responding well to the medications given to him at the time, and recommended that Petitioner "continue to receive psychiatric treatment in a correctional setting." (Records at 987.) In addition, Dr. O'Brian described Petitioner as alert, with logical and goal directed thought processes when responsive to questions posed to him. (Records at 986.) Accordingly, as of April 6, 1998, Petitioner was not so mentally incompetent as to render him incapable of filing a timely petition for writ of habeas corpus. See Nara, 264 F.3d at 320. There is no evidence of record which would indicate that Petitioner's mental status subsequently changed to such a degree as to render Petitioner incapable of pursuing his legal remedies.

To bolster his claim for equitable tolling, Petitioner points to various prison hospital records dating from May 1, 1998 through October 2003, which consist of psychiatric treatment notes and evaluations (the "Cumulative Adjustment Records"). A close examination of the Cumulative Adjustment Records from the relevant

period of time, however, establishes that, although Petitioner was suffering from a psychological disorder, this disorder did not prevent him "from managing his affairs and thus from understanding his legal rights and acting upon them." Graham, 2002 WL 32149019, at *3. Indeed, the Cumulative Adjustment Records from August through December of 1998 indicate that, although Petitioner's perceptions were at times delusional, his insight, judgment, memory, orientation, and intelligence were almost consistently "normal." (Records at 59, 65, 66, 67, 69, 70, 78.) Cumulative Adjustment Records from February through May of 1999, which used a different terminology, Petitioner was equally consistently rated as functioning on a slightly below average level of insight, judgment, memory, orientation and intelligence. (Records at 281, 283, 284, 285.)

This same conclusion was reached by Dr. Voskanian. Dr. Voskanian determined "with a reasonable degree of medical certainty, that in the period from May 1998 through May 1999, [Petitioner's] mental illness did not prevent him from understanding his legal rights and acting upon them." (Report by Dr. Voskanian (the "VR") at 27.) More specifically, Dr. Voskanian concluded that Petitioner's "creativity during his presentation in interviews indicates that his state of mind was directed at serving his best interests and of his concern for self preservation, [which] contradicts the notion that [Petitioner], as a result of

mental illness, was unable to protect his rights and interests."
(VR at 20.)

Dr. Voskanian also determined that, while evaluators who had brief contact with Petitioner had a tendency to take his complaints at face value, "evaluators who made more involved and in-depth assessments are unanimous in detecting inconsistencies in [Petitioner's] presentation. These evaluators highlight [Petitioner's] pervasive tendency to exaggerate or misrepresent symptoms." (VR at 28.) In addition, Dr. Voskanian found that the in-depth psychological evaluations of Petitioner described no significant psychiatric pathology from May 1998 through May 1999, and that it is unlikely that Petitioner's cognitive abilities became impaired or otherwise changed since the time of trial. (VR at 29.) In addition, Dr. Voskanian's examination of the correctional treatment records showed that Petitioner's other actions, "such as seeking medial treatment and presenting himself in a rational manner during evaluations for medical reasons, indicates that he 'knew what to do' and that his allegedly not knowing his specific legal rights was not the result of mental illness." (VR at 31.) Accordingly, Petitioner's choices in the period from May 1998 through May 1999 "cannot be explained on the basis of his having cognitive limitations or an inability to make choices due to cognitive limitations or mental illness." (VR at 30.)

Finally, Petitioner himself stated during his examination by Dr. Voskanian, that he would have had the capacity to pursue his legal remedies if he had known about them at the time. (VR at 16.) In Petitioner's own words: "I was through a lot of jails. If somebody told me back then, I would do it right away...or I would have somebody help me...If I knew at the time, I would definitely do it. I am crazy, but I'm not stupid." Id. Upon repeated inquiry into his ability to pursue legal remedies during his first year of incarceration, Petitioner again "specifically repeated that he had the ability to pursue his legal rights, and if he had known about his legal rights, 'I would definitely do it. I'm crazy, but I'm not stupid.'" Id.

Based on these extensive psychiatric reports and evaluations, as well as Petitioner's own statements, the Court concludes that Petitioner's mental illness did not prevent him from filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 within one year after his state judgment had become final. Accordingly, Petitioner's objections to the Magistrate Judge's Supplemental Report and Recommendation are overruled.²

² Petitioner also objects to Magistrate Judge Smith's SR&R on the grounds that Magistrate Judge Smith used an incorrect standard to assess Petitioner's diligence in preserving his cause of action. As this Court has already determined that equitable tolling does not apply in the instant case, it need not reach the question of whether Petitioner acted diligently to preserve his claims for legal review.

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ORDER

AND NOW, this twenty-fifth day of October, 2004, upon careful and independent consideration of the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. No. 1) and all attendant and responsive briefing, and after review of the Supplemental Report and Recommendation of United States Magistrate Judge Charles B. Smith, and in consideration of Petitioner's Objections to the Magistrate Judge's Supplemental Report and Recommendation, and the Record before the Court, **IT IS HEREBY ORDERED** that:

1. Petitioner's Objections to the Supplemental Report and Recommendation are **OVERRULED**;
2. The Supplemental Report and Recommendation is **APPROVED** and **ADOPTED**;
3. The Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 is **DENIED**;
4. As 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 pursuant to 28 U.S.C. § 2253(c)(2); and

5. The Clerk shall **CLOSE** this case statistically.

BY THE COURT:

John R. Padova, J.