

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

EDWARD J. LEIDY : CIVIL ACTION
: :
v. : :
: :
FRANK GILLIS, et al. : NO. 04-03666-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 7, 2005

United States Magistrate Judge Carol Sandra Moore Wells has filed a report recommending that this habeas corpus petition be rejected without a hearing, as untimely. Petitioner has filed objections to the report.

Petitioner entered a counseled plea of *nolo contendere* to an indictment charging a sexual offense perpetrated upon an 11-year-old minor. The plea agreement specified the sentence he would receive, and he was immediately sentenced in accordance with the agreement. He did not appeal. Several years later, he sought PCRA relief in the state courts, but his application was denied as untimely.

In affirming dismissal of the PCRA petition, the Pennsylvania Superior Court also addressed the merits. Petitioner claims that his conviction and sentence were illegal, because the statute of limitations had expired before the prosecution was instituted. At the time petitioner's offense was committed, a Pennsylvania statute tolled the statute of

limitations in sexual offenses against minors, if committed by a family member, or someone in a position to exercise custody or control over the minor. After the offense was committed, but before sentence, another statute became effective, tolling the limitations period during the minority of a victim of a sexual crime, regardless of the status of the perpetrator. Apparently, it is petitioner's belief that his conviction and sentence amounted to *ex post facto* application of the statutes. The Superior Court rejected these assertions, pointing out (1) petitioner had waived the limitations issue by pleading *nolo contendere*; (2) the limitations period was tolled under the provisions of the statute as it existed at the time of petitioner's offense, since petitioner, at the time, did exercise dominion and control over the minor victim; and, (3) in any event, petitioner had waited too long to raise the claims. The Superior Court decision was clearly correct in all respects, involved only factual matters and issues of state law, and is entitled to deference in this court. Thus, even if the present petition could be regarded as timely - which it obviously cannot - petitioner could not prevail.

The report of the United States Magistrate Judge will therefore be approved and adopted.

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

EDWARD J. LEIDY : CIVIL ACTION
 :
v. :
 :
FRANK GILLIS, et al. : NO. 04-03666-JF

ORDER

AND NOW, this 7th day of March 2005, upon consideration of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells, and petitioner's objections thereto, IT IS ORDERED:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. Petitioner's objections are OVERRULED.
3. The Petition for habeas corpus is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.