

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

RONALD WILSON,	:	CIVIL ACTION
Petitioner,	:	
vs.	:	
	:	
WILLIAM STICKMAN, III,	:	
Superintendent; THE DISTRICT	:	NOS. 03-669 and 03-953
ATTORNEY OF THE COUNTY OF	:	
PHILADELPHIA; and THE ATTORNEY	:	
GENERAL OF THE STATE OF	:	
PENNSYLVANIA,	:	
Respondents.	:	

ORDER

AND NOW, this 21st day of July, 2005, upon careful and independent consideration of the Petitions for Writ of Habeas Corpus filed by petitioner, Ronald Wilson, and after review of the Report and Recommendation of United States Magistrate Judge Jacob P. Hart dated January 28, 2005, and Petitioner's Objections to the Report and Recommendation of United States Magistrate Judge Jacob P. Hart, **IT IS ORDERED** as follows:

1. The Report and Recommendation of United States Magistrate Judge Jacob P. Hart dated January 28, 2005, is **APPROVED** and **ADOPTED**;
2. Petitioner's Objections to the Report and Recommendation of United States Magistrate Judge Jacob P. Hart are **OVERRULED**;
3. The Petitions for Writ of Habeas Corpus Under 28 U.S.C. § 2254 (Document No. 1, filed February 3, 2003 in Civil Action No. 03-669; and, Document No. 1, filed February 20, 2003, in Civil Action No. 03-953) are **DISMISSED AS UNTIMELY**; and,
4. Because petitioner has failed to make a substantial showing of the denial of a constitutional right, there is no basis for issuing a certificate of appealability.

MEMORANDUM

I. INTRODUCTION

Magistrate Judge Jacob P. Hart issued a Report and Recommendation on January 28, 2005. In the Report and Recommendation he concluded that the Petitions for Writ of Habeas Corpus filed by Ronald Wilson were not timely filed. Petitioner filed Objections to the Report and Recommendation in which he argued that the Magistrate Judge failed to “give proper weight to petitioner’s mental retardation, which, together with his illiteracy and other mental health problems” constitutes mental incompetence and qualifies him for equitable tolling of the statute of limitations.

The Magistrate Judge addressed the issue of equitable tolling in the Report and Recommendation and concluded that petitioner’s mental condition did not warrant equitable tolling. The Court agrees with that part of the Report and Recommendation and writes at this time to supplement the Magistrate Judge’s analysis of the equitable tolling argument.

II. FACTS

Petitioner, Ronald Wilson, is currently serving a sentence of 40-80 years at SCI Greene, following convictions for three robberies in 1984 and 1985.¹ The state Superior Court affirmed the judgments on November 5, 1993 and petitioner did not appeal this decision in the Pennsylvania Supreme Court. Following his unsuccessful requests for post-conviction relief in state court, petitioner filed two *pro se* Petitions for Writ of Habeas Corpus in this Court on

¹ The facts of the case are detailed in the Report and Recommendation and need not be repeated in full in this Memorandum. Instead the Court will focus on those facts relevant to the issue raised in petitioner’s Objections—that the Magistrate Judge failed to consider the evidence of his mental condition qualifying him for equitable tolling.

February 3 and February 20, 2003, pursuant to 28 U.S.C. §2254. Each Petition challenges a different state court robbery conviction, but both Petitions allege the same three grounds for relief: (1) that petitioner was incompetent to stand trial, (2) that prior counsel were ineffective for failing to seek a mental evaluation, and (3) that the sentencing court abused its discretion by imposing consecutive sentences.

The Magistrate Judge conducted an evidentiary hearing on October 28, 2004 on the timeliness of the Petitions and the issue of equitable tolling. On January 28, 2005, he issued a Report and Recommendation, concluding that the Petitions were not timely filed and that petitioner's mental condition did not entitle him to equitable tolling. These conclusion were based on the findings that (1) petitioner provided insufficient evidence of a mental disorder (R&R at 7); (2) although petitioner is "virtually illiterate," this fact alone was insufficient to warrant equitable tolling (Id.); and (3) petitioner demonstrated that "he had the ability to interact with others and convey his legal situation because he successfully filed several appeals in state courts [and the Petitions before this Court], through 'jailhouse lawyers' he befriended in the institutions." (R&R at 9).

In his Objections to the Report and Recommendation, petitioner argues that the Magistrate Judge failed to properly weigh "petitioner's mental retardation[,]. . . his illiteracy and other mental health problems," which he asserts constitute mental incompetence and qualify him for equitable tolling of the statute of limitations.

III. STANDARD OF REVIEW

Where a court refers a habeas petition to a magistrate judge, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or

recommendations to which objection is made. . . [and] 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)(1)(c).

IV. ANALYSIS OF PETITIONER’S OBJECTIONS

A. Applicable Law

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. §2244(d)(1) (enacted April 24, 1996), provides, in relevant part:

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. . .

Moreover, if direct review of petitioner’s criminal conviction ended before enactment of the AEDPA, the one-year statute of limitations begins to run on the date of the statute’s enactment on April 24, 1996. Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). Because petitioner’s conviction became final before the enactment of the AEDPA, and he did not file any state petitions for post-conviction relief during the one-year limitations period, he had until April 23, 1997 to file a timely federal petition. Id. He failed to do so, and instead filed the instant Petitions on February 3 and 20, 2003.

Equitable tolling may be appropriate under some circumstances, including “if the [petitioner] has in some extraordinary way been prevented from asserting his rights.” Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999) (internal citations omitted). In Nara v. Frank, the Third Circuit held that “mental incompetence” may constitute an extraordinary circumstance.

Nara v. Frank, 264 F.3d 310, 320 (3d Cir. 2001), overruled in part on other grounds, Carey v. Saffold, 536 U.S. 214 (2002). In that decision the Court ruled that “mental incompetence is not a per se reason to toll a statute of limitations,” but the “alleged mental incompetence must somehow have affected the petitioner's ability to file a timely habeas petition.” Id. (internal citations omitted).

In a recent decision, one court in this Circuit concluded that the Third Circuit “has never held that ‘mental health problems,’ an undefined and expansive category, constitutes a basis for equitable tolling. . . . A mental condition that burdens but does not prevent a prisoner from filing a timely habeas petition does not constitute an extraordinary circumstances warranting equitable tolling.” U.S. v. Harris, 268 F. Supp. 2d 500, 506 (E.D. Pa. 2003) (internal citations omitted) (Dalzell, J.). “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.” Graham v. Kyler, 2002 WL 32149019, at *4 (E.D. Pa. 2002) (Giles, C.J.). Id. at *4. For example, “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.”

B. Petitioner’s Objections

Petitioner in this case relies on the decision in Graham v. Kyler, 2002 WL 32149019, in arguing that his alleged impairments constitute an extraordinary circumstance warranting equitable tolling. The court in Graham held that the petitioner’s mental condition warranted equitable tolling after weighing the following facts supported by expert testimony: (1) petitioner “had been diagnosed with a variety of psychiatric disorders by five different physicians”; (2) petitioner “[could not] read legal materials, but more importantly. . . he lacked the level of

cognitive functioning necessary to pursue legal remedies available to him”;² (3) petitioner suffered from “a psychiatric disorder which interfere[d] with his ability to trust and actively seek the assistance of others, render[ing] him incapable of pursuing his rights”²; and (4) petitioner was incapable of preparing his habeas petition or aiding others in doing so, but instead merely signed his name to a petition prepared by another prisoner. Id. at *5-7.

Turning to the facts of this case, the Court agrees with the Magistrate Judge’s conclusion that, unlike the petitioner in Graham, “Wilson’s psychiatric history is conflicting,” as is the evidence of mental retardation. (R&R at 7). At the evidentiary hearing on this issue, petitioner and his mother testified that as a juvenile he had serious academic and behavioral problems, and that after the fourth or fifth grade he was admitted to the Youth Study Center—which sent him to programs at Eastern State Hospital, Pennhurst State Hospital, Embreville State Hospital, and Philadelphia General Hospital. (10/28/04 Tr. at 10, 32-33). Petitioner stated that he was admitted to Philadelphia General Hospital during this period for “psychiatric reasons.” (Tr. at 34).

However, petitioner later testified that he has never been diagnosed with a mental illness (Tr. at 49) and that he was not treated for psychiatric problems since entering state prison in 1984 (Tr. at 34). Moreover, he cites no evidence (e.g., expert testimony, prison medical records) to establish that he was diagnosed with a mental disorder during the relevant period other than depression which courts have held to be “a common fact of prison life and therefore not, without more, a sufficient basis for tolling.” Graham, 2002 WL 32149019, at *3. Prison records dated May 31, 2000 stated that petitioner “[d]enied psychiatric treatment, but hospitalized at Pennhurst

² The district court in Harris, in dicta, stated that “some recent equitable tolling decisions have more narrowly defined mental incompetence as the inability to even assist others in the preparation of the habeas petition.” Harris, 268 F. Supp. 2d at 506, n.10.

Hospital, Eastern State Hospital and two other facilities. . . According to him, his diagnosis was conduct disorder and learning disability.” (Tr. at 44). Petitioner’s mother also testified that he has not been diagnosed with a psychiatric disorder. (Tr. at 13).

Further, petitioner fails to cite any evidence of mental retardation other than his learning disability and his testimony that at the “mental hospitals I’ve been to [as a juvenile]. . . it was [sic] a lot of retarded people.” (Tr. at 49). The Magistrate Judge concluded that petitioner was “virtually illiterate,” but that this fact, standing alone, was insufficient to warrant equitable tolling. (R&R at 7-8). The authority on this issue supports the Magistrate Judge’s conclusion. See, e.g., Cobas v. Burgess, 306 F.3d 441, 444 (6th Cir. 2002); Turner v. Johnson, 177 F.3d 390, 391 (5th Cir. 1999). Further, this Court and others have held that a learning disability does not qualify as an extraordinary circumstance warranting equitable tolling where the evidence does not otherwise establish that this condition “rendered [petitioner] incapable of pursuing his claim.” Jones v. Boyd, 1998 WL 314668, at *5 (E.D. Pa. 1998) (DuBois, J.) (internal citations omitted). See also, e.g., U.S. v. Richardson, 215 F.3d 1338 (10th Cir. 2000); Cannon v. Kuhlmann, 2000 WL 1277331 (S.D.N.Y. 2000).

Additionally, unlike the petitioner in Graham, petitioner in this case was adept at requesting and receiving assistance from other inmates—“jailhouse lawyers.” In fact, petitioner requested such assistance for numerous submissions, including the instant Petitions. For example, he testified that another inmate interviewed him multiple times while drafting one of his PCRA petitions in 1999. (Tr. at 48). He also asked another inmate, Mr. McKenna, to prepare the instant Petitions after hearing from other inmates that Mr. McKenna was “the best in the jail.” (Tr. at 38). Unlike the petitioner in Graham, petitioner provides no evidence that he suffered

from “a psychiatric disorder which interfere[d] with his ability to trust and actively seek the assistance of others, render[ing] him incapable of pursuing his rights.” Graham, 2002 WL 32149019, at *5. Thus, in light of the circumstances, petitioner has demonstrated that he possessed “the level of cognitive functioning necessary to pursue legal remedies available to him.”Id.

In sum, with respect to petitioner’s alleged mental incompetence, the “totality of the circumstances” in this case differ significantly from that in Graham, the case upon which petitioner relies. Most importantly, he submits insufficient evidence that he suffers from a psychiatric disorder or mental retardation, or that such a disorder prevented him from pursuing his claims. Harris, 268 F. Supp. at 506. Thus, his alleged condition does not constitute an extraordinary circumstance warranting equitable tolling.

V. CONCLUSION

For all of the foregoing reasons, the Court overrules petitioner’s Objections, approves and adopts the Report and Recommendation, and dismisses the Petition as untimely.

BY THE COURT:

JAN E. DUBOIS, J.