

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

SALVATORE AIELLO,	:	CIVIL ACTION
Petitioner	:	
	:	
v.	:	
	:	
WARDEN, SCI GRATERFORD, et al.,	:	03-CV-1655
Respondents	:	

MEMORANDUM AND ORDER

CHARLES B. SMITH
U.S. MAGISTRATE JUDGE

Petitioner Salvatore Aiello filed the instant petition for a writ of habeas corpus ten years after his state conviction became final. Aiello seeks equitable tolling of the Antiterrorism and Effective Death Penalty Act (“AEDPA”) limitations period alleging his severe mental illness and cognitive limitations caused his inability to file a timely petition. After reviewing the psychological report prepared by Frank M. Dattilio, Ph.D., the psychiatric report prepared by Pogos H. Voskanian, M.D., and the testimony received at the October, 2005 evidentiary hearing on this issue, I have concluded that Aiello’s petition should be deemed timely filed.

Aiello’s judgment of sentence became final on March 8, 1993, ninety (90) days after the Supreme Court of Pennsylvania denied allocatur and the time to seek review in the Supreme Court of the United States expired. See Morris v. Horn, 187 F.3d 333, 337 n.1 (3d Cir. 1999) (citing Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999) (judgment final after the expiration of the time for seeking certiorari has expired whether or not review is actually sought)). Thus, Aiello was required to file his habeas petition on or before April 23, 1997. Aiello did not

file his petition until March 19, 2003, almost six years after the expiration of the limitations period. .

The AEDPA's one-year limitations period for filing a federal habeas petition is subject to both statutory and equitable tolling. 28 U.S.C. § 2244(d) (enumerating statutory tolling provisions); Merritt v. Blaine, 326 F.3d 157, 161 (3d Cir. 2003) (holding AEDPA's time limit is subject to the doctrine of equitable tolling, a judicially crafted exception). Aiello has failed to provide this court with any facts to establish that a PCRA petition was filed prior to the expiration of the grace period and that it remained pending for a period sufficient to make the instant petition timely.¹ Nor does Aiello satisfy any of the exceptions to the period of limitations set forth in § 2244(d)(1)(B)-(D). Aiello does not allege any state action that prevented him from filing his petition; he does not assert any claim that relies on a new rule of retroactively applicable constitutional law; and the factual predicates upon which his claims are based concern events that took place during his trial proceedings and were discoverable in the exercise of due diligence.

Thus, the resolution of this issue depends on Aiello's mental state during this period and whether he has established any extraordinary circumstance beyond his control that would meet the judicially established criteria for disregarding the limitations period pursuant to the doctrine of equitable tolling. See Miller v. New Jersey Dept. of Corrections, 145 F.3d 616, 617-18 (3d Cir. 1998) (petitioner must show that he exercised reasonable diligence in bringing his claims; mere excusable neglect is not sufficient). Equitable tolling is available "only when the principle of equity would make the rigid application of a limitation period unfair," Id. at 618; and "only in

¹ Counsel for Aiello has not provided any additional information to support his claim that a PCRA petition was filed.

the rare situation where [it] 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) (citing Alvarez-Machain v. United States, 96 F.3d 1246, 1251 (9th Cir. 1996)).²

To warrant equitable tolling, Aiello must prove he has in “some extraordinary way been prevented from asserting his . . . rights” and he “exercised reasonable diligence in investigating and bringing [the] claims.” Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001). Although mental incompetence is not a per se reason to toll the statute of limitations, where a person’s mental deficiency actually affects his ability to file a timely habeas petition, it may constitute extraordinary circumstances justifying equitable tolling. Nara v. Frank, 264 F.3d 310, 317 (3d Cir. 2001). However, “the 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 from understanding his legal rights and acting upon them.’” Graham v. Kyler, 2002 U.S. Dist. LEXIS 26639, *8 (E.D. Pa. Oct. 31, 2002) (Giles, C.J.) (quoting Miller v. Runyon, 77 F.3d 189, 191 (7th Cir. 1996)). In Graham, the Court found that the focus of this determination is “not a lack of information, which has been held insufficient to warrant equitable tolling, see Cortez v. Saffle, 2001 U.S. App. LEXIS 4268, at *1 (10th Cir. Mar. 21, 2001), but, rather, the irremediable inability to access information and make use of it.” Id. Equitable tolling may be available in cases of mental incompetence where it is demonstrated that the petitioner is unable to pursue his legal rights, “provided there is a nexus between the petitioner’s mental incompetence and [his]

² The Supreme Court has not decided whether equitable tolling applies to AEDPA’s statute of limitations, but was willing to assume it was in a case in which it made no difference. Pace v. DiGuglielmo, 544 U.S. 408, 125 S. Ct. 1807, 1815 n.8 (2005).

inability to file a timely petition.” United States v. Harris, 268 F. Supp.2d 500, 506 (E.D. Pa. 2003) (Dalzell, J.). Other equitable tolling decisions have even more narrowly defined mental incompetence as the inability even to assist others in the preparation of the habeas petition. Id. at 506 n.10 (citing Martin v. Ayers, 41 Fed. Appx. 972, 973 (9th Cir. 2002); McFarland v. Cockrell, 2002 WL 31360395, at *3 (N.D. Tex. Oct.15, 2002)).

“[A] mental condition that burdens but does not prevent a prisoner from filing a timely petition does not constitute ‘extraordinary circumstances’ justifying equitable tolling.” Harris, 268 F. Supp.2d at 506 (holding that although the petitioner had presented an expert opinion that her mental condition during the relevant time period burdened her efforts to file her habeas petition, there was no evidence that she was mentally incompetent in the sense that her circumstances prevented her from filing a timely petition and she therefore had not made the threshold showing for equitable tolling). Equitable tolling has been declined where the petitioner submitted a psychological evaluation finding it unlikely he would be able to understand court proceedings that predated the time period in which he should have filed his habeas petition. See Clapsadl v. Shannon, 2003 U.S. Dist. LEXIS 22252 at *6 (E.D. Pa., Nov. 18, 2003) (Surrick, J.).

The determination that a mental deficiency is sufficient to justify equitable tolling must be based upon the specific facts of a particular case, rather than upon the psychiatric diagnosis. Graham, 2002 U.S. Dist. LEXIS at *10 (E.D. PA, Giles, C.J.). In Graham, after conducting an evidentiary hearing, the Court tolled the statute of limitations where the petitioner presented evidence of severe child abuse and mental problems, including a suicide attempt and a diagnosis of emotionally unstable personality and moderate mental retardation, resulting in his being institutionalized for six years beginning at age 9. Graham also presented an expert opinion that he

lacked the level of cognitive functioning necessary to pursue legal remedies available to him during the relevant time period and was incapable of pursuing his legal rights.

Aiello's medical history reveals that he has suffered from severe mental illness and cognitive deficiencies beginning in his early childhood. Although there are numerous and varied accounts of his family history included in his records, each variation describes a dysfunctional family, limited education (with I.Q. scores ranging from 63 to 94), repeated hospitalizations for mental illness, drug and alcohol abuse, and a criminal history that included other instances of aggressive and violent behavior. Aiello has been diagnosed as suffering from: schizophrenia, mild mental retardation, organic brain syndrome, seizure disorders, amnesic syndrome, continuous alcoholism and substance abuse, and passive aggressive personality disorder. His prison record also depicts an individual with a severe mental illness, periodic decompensations and repeated hospitalizations.³

Thus, I find Aiello's history of mental illness is significant and sufficiently documented to require further consideration of his ability to file a timely petition. Of course, this presents the difficult task of a present day evaluation of Aiello's past mental condition. The expert reports, while generally consistent, provide a different response to this inquiry.

Dr. Dattilio concluded that:

³ Counsel for the petitioner has provided a time-line of Aiello's place of confinement within the state prison system from 1996 through the date he filed this petition. Although initially housed in the Mental Health Unit/Special Needs Unit ("MHU/SNU") at SCI Graterford, he was transferred to SCI Waymart for an inpatient psychiatric commitment from January 27, 1997 through July 28, 1998. On his transfer back to Graterford, he returned to the general population but was periodically housed in the MHU/SNU. The prison records show additional treatment at MHU/SNU from December 24, 1998 to January 22, 1999, August 13, 1999 to October 19, 1999, and finally from June 2002 until his return to SCI Waymart on October 9, 2002. The records indicate additional transfers for treatment at the MHU/SNU during his incarceration at Graterford, but are not clear as to specific dates. Aiello was housed at Waymart when this petition was filed.

. . . Aiello was not able to file his motion during the time period, nor does it appear that his thinking was coherent and clear at any point in which he could assist anyone else in doing so. Furthermore, due to Mr. Aiello's tumultuous upbringing and the emotional impoverishment during his formative years, his ability to trust was shattered early in his life. As a result, it is highly unlikely that he was capable of trusting anyone to assist him during his adult years. It is this same limitation in thinking that precluded him from filing any motion on his own.

See Dattilio Psychological Evaluation, April 20, 2004, at 10. Dr. Dattilio testified that Aiello meets the criteria for an undifferentiated state of schizophrenia, his condition is chronic, and his mental illness prevented him from filing his petition until March, 2003. See Evidentiary Hearing, Apr. 25, 2005, N.T. at 56, 58. Dr. Dattilio explained that his determination of Aiello's ability to file was based on Aiello's lack of certain skills, i.e., knowing "where to obtain the information, what you're filing for, the language, the timeliness, those all involve[] skills that his were impaired." Id. at 58. In other words, Aiello lacked the ability to initiate these proceedings because of his mental illness and cognitive limitations. Dr. Dattilio was unable to explain how this petition ultimately came to be filed. He offered the possibility that Aiello's extensive confinement at Waymart, a forensic treatment center, may have been a contributing factor.

On the other hand, it was Dr. Voskanian's opinion that Aiello's failure to file a timely petition did not result from symptoms of mental illness. See Voskanian Report at 61. Dr. Voskanian reviewed Aiello's extensive psychiatric history and disagrees with the prior diagnoses that Aiello suffers from schizophrenia or schizoaffective disorder. Id. at 51. Instead, it was Dr. Voskanian's opinion that Aiello suffers from temporal lobe epilepsy, post-traumatic stress syndrome, a history of head injuries and post-concussive syndrome, polysubstance dependence, and a mixed personality disorder. Id. Dr. Voskanian reports that individuals with temporal lobe

epilepsy may have symptoms similar to schizophrenia but they do not progressively deteriorate; however, this condition may still be severe and disabling. Id. at 52. Dr. Voskanian conducted a thorough and detailed review of Aiello's medical records and concluded that there were periods during which he did not have the requisite mental state to file a habeas petition, but there were also periods of time where Aiello was receiving treatment and did not demonstrate a degree of deterioration that would prevent him from filing his petition. Id. at 55-56. However, Dr. Voskanian was unable to identify specific periods during which Aiello would have had the ability to file a habeas corpus petition.

It is clear that Aiello has a well-documented and extensive history of serious mental illness and significant cognitive limitations that have consistently plagued him. Although there may have been periods of lucidity where Aiello could have filed (and in fact did file) his petition, it cannot be determined with any certainty when, or for how long, he had the ability to file. It is also significant that Aiello's record does not include any instances where he asserted his rights or registered other complaints. There is no evidence that Aiello has filed any other legal proceedings or grievances during his imprisonment. Under these circumstances, I am satisfied that equitable tolling should be permitted and I will consider the merits of his claims. An appropriate order follows.

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ORDER

AND NOW, this 20th day of April, 2006, IT IS HEREBY ORDERED that:

1. The petition for a writ of habeas corpus is deemed timely filed.
2. Petitioner shall have thirty (30) days to file an amended petition to clarify the claims raised in Aiello's March 2003 petition. See Henderson v. DiGuglielmo, 138 Fed. Appx. 463, 466 (3d Cir. 2005) (citing United States v. Duffus, 174 F.3d 333, 337 (3d Cir. 1999) (denying motion to amend petition after expiration of the limitations period to assert new claims that do not relate back to claims raised in timely petition).
3. Respondents shall have thirty (30) days to file a response.

BY THE COURT:

/s/ Charles B. Smith
CHARLES B. SMITH
UNITED STATES MAGISTRATE JUDGE