

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

BENJAMIN CHAPMAN : CIVIL ACTION
 :
 v. : No. 05-6056
 :
 M.S. BROOKS, et al. :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

May 24, 2006

Benjamin Chapman, who is incarcerated at the State Correctional Institution in Albion, Pennsylvania, filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. In his objections to a Magistrate Judge’s Report and Recommendation, Chapman argues his habeas application should not be dismissed as untimely. I conclude Chapman’s reasons are without merit and will adopt the Report and Recommendation, dismiss the application, and write only on the objections he raises.

On December 20, 1995, the Pennsylvania Superior Court affirmed Chapman’s convictions for first-degree murder and possession of an instrument of crime. *Commonwealth v. Chapman*, 674 A.2d 312 (Pa. Super. 1995) (table). Chapman did not request allowance to appeal to the Pennsylvania Supreme Court, and, on January 17, 1996, filed a timely *pro se* petition under Pennsylvania’s Post-Conviction Relief Act (PCRA).¹ The Pennsylvania Superior Court affirmed the lower-court’s dismissal of Chapman’s PCRA petition, *Commonwealth v. Chapman*, 736 A.2d 5 (Pa. Super. 1998) (table), and the Supreme Court of Pennsylvania denied allocatur on April 7, 1999,

¹42 Pa. C.S. § 9541, *et seq.*

Commonwealth v. Chapman, 737 A.2d 1223 (Pa. 1999) (table). Chapman subsequently brought two successive PCRA petitions – one on March 27, 2000 and the other on May 13, 2003; both denied as untimely. After the Pennsylvania Supreme Court declined to consider Chapman’s final PCRA petition on September 13, 2005, he sought federal habeas relief on November 7, 2005.

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), an application for a writ of habeas corpus must be filed within one year from “the date on which the [petitioner’s] judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). This period may be statutorily tolled if “a properly-filed application for State post-conviction relief or other collateral review with respect to the pertinent judgment is pending” *Id.* § 2244(d)(2).

In his “Objections to the Report and Recommendation,” Chapman argues the Philadelphia Court of Common Pleas and the Superior Court of Pennsylvania “rendered decisions as to the timeliness of Petitioner’s second PCRA Petition, filed on March 27, 2000, that was [sic] contrary to or involved an unreasonable application of clearly established state procedural requirements.” (Pet’r Obj. 1.) Chapman also contends the Report and Recommendation is flawed because the Magistrate Judge failed to independently review whether Chapman’s PCRA petitions were properly filed. (Pet’r Obj. 1-2.) Simply stated, Chapman believes he timely filed his PCRA petitions and the time-bar to his application for a writ of habeas corpus should be statutorily tolled.

According to the Third Circuit, “‘a properly filed application’ [for post-conviction relief] is one submitted according to the state’s procedural requirements, such as the rules governing the time and place of filing.” *Lovasz v. Vaughn*, 134 F.3d 146, 148 (3d Cir. 1998). Thus, to determine whether Chapman’s PCRA petitions were properly filed, this Court must look to Pennsylvania law.

Fahy v. Horn, 240 F.3d 239, 243 (3d Cir. 2001). Here, the Pennsylvania courts have “specifically ruled” Chapman’s second and third PCRA petitions were untimely “as a matter of state law,” *id.* at 244,² meaning these petitions were not properly filed for purposes of the AEDPA.³ I, along with the Magistrate Judge, must defer to those rulings. *Lovasz*, 134 F.3d at 148. Therefore, I reject Chapman’s objections, hold the period for filing is not statutory tolled,⁴ and will dismiss his request for federal relief.

An appropriate order follows.

²“PCRA timeliness requirements are jurisdictional in nature, and, accordingly, a PCRA court cannot hear untimely PCRA petitions.” *Commonwealth v. Rienzi* 827 A.2d 369, 371 (Pa. 2003) (citing *Commonwealth v. Murray*, 753 A.2d 201, 203 (Pa. 2000)).

³In addressing Chapman’s objection that his second PCRA petition was properly filed, the timeliness of this PCRA petition is not dispositive of whether his application for federal relief should be statutorily tolled under the AEDPA. Assuming *arguendo* that Chapman’s second petition was timely filed, Chapman would only have had until December 18, 2003 – one year after the Pennsylvania Supreme Court denied allocatur on his second petition – to apply for a writ of habeas corpus. Chapman did not file his application, though, until November 7, 2005.

⁴Chapman had until April 7, 2000 – one year after the Pennsylvania Supreme Court denied allocatur on his first PCRA petition – to file an application for a writ of habeas corpus under the AEDPA. It is undisputed that Chapman’s first PCRA tolled the one-year period from the date his conviction became final. Additionally, Chapman does not challenge the Magistrate Judge’s determination that equitable tolling does not apply under the circumstances presented here.

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ORDER

AND NOW, this 24th day of May, 2006, the Report and Recommendation of United States Magistrate Judge Peter B. Scuderi is APPROVED and ADOPTED and the Application for Writ of Habeas Corpus (Document 1) is DISMISSED. There is no basis for the issuance of a certificate of appealability.

BY THE COURT:

/s/ Juan R. Sánchez

Juan R. Sánchez, J.