

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

**JUAN CAMILO,**

**Petitioner,**

v.

**EDWARD KLEM, ET AL.**

**Respondents,**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**CIVIL ACTION**

**NO. 05-5946**

**MEMORANDUM ORDER**

**AND NOW**, on this \_\_\_\_ day of June, 2006, upon careful and independent consideration of the pleadings and record herein, and after review of the Report and Recommendation (the “R&R”) of United States Magistrate Judge Jacob B. Hart (Doc. 8) and Petitioner’s Objections (Doc. 11), **IT IS HEREBY ORDERED AND DECREED** that:

1. The R&R is **APPROVED** and **ADOPTED AS FOLLOWS**;

United States Magistrate Judge Jacob B. Hart’s R&R fully addresses the Petitioner’s claims as presented in the Petitioner’s habeas petition. In his *pro se* petition, Petitioner Juan Camilo (“Camilo”) seeks habeas corpus relief under 28 U.S.C. § 2254.

On January 27, 1999, Camilo entered a guilty plea to multiple drug-related charges.<sup>1</sup> Camilo was sentenced to an aggregate term of 9-18 years imprisonment on March 10, 1999.<sup>2</sup> On March 22,

---

<sup>1</sup> Camilo’s guilty plea included charges for information numbers 2253, 2254, 2257, and 2259 of 1998 – delivery of cocaine and criminal conspiracy; information numbers 2258 and 2261 of 1998 – criminal conspiracy; information number 2256 of 1998 – delivery of cocaine; information number 2260 of 1998 – seven counts of delivery of a controlled substance, one count of possession with intent to deliver, and eight counts of criminal conspiracy.

<sup>2</sup> The charges for the sentencing scheme were broken into two groups. The first group consisted of information numbers 2254, 2256, 2257, 2258, 2259, and 261. For this group, Camilo was sentenced to 4-8 years on each, to be served concurrently with one another. For the second group, information numbers 2253 and 2260, Camilo was sentenced to 5-10 years on each, again to be served concurrently with one another. However, the

1999, Camilo filed a Motion to Modify or Reconsider the Sentence. The trial court denied the motion on April 5, 1999.

On June 16, 1999, Camilo filed a request to appeal *nunc pro tunc*, which the trial court granted on June 23, 1999. On appeal, Camilo claimed that the trial court had abused its discretion in sentencing him in the aggravated range of the sentencing guidelines, which resulted in the imposition of an unreasonable sentence depriving him of the benefit of his plea agreement. On June 26, 2000, the Superior Court affirmed the judgment of sentence. *Commonwealth v. Camilo*, 760 A.2d 423 (2000).<sup>3</sup>

On April 19, 2002, Camilo filed a *pro se* petition pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 PA. CONS. STAT. §§ 9541-9551. On March 7, 2003, the PCRA Court dismissed the petition as untimely. On March 21, 2003, Camilo filed an appeal. On December 17, 2003, the Superior Court remanded the case to the PCRA Court for further consideration, expressing concern that counsel appointed by the PCRA Court failed to properly represent Camilo in pursuing his PCRA appeal. The PCRA Court appointed new counsel for Camilo on remand. Following a hearing held on July 21, 2004, the court again dismissed Camilo's PCRA petition as untimely. Camilo filed a timely appeal. On September 9, 2005, the Superior Court affirmed the decision of the PCRA Court.<sup>4</sup>

---

sentences imposed on the convictions in group 1 were to be served consecutively to the sentences imposed in group 2.

<sup>3</sup> In responding to Petitioner's habeas petition, the District Attorney mistakenly lists the date of this opinion as June 26, 2001. (Resp. at ¶ 6.)

<sup>4</sup> In its affirmation of the PCRA Court's decision, the Superior Court addressed Camilo's claim that his direct appellate counsel failed to notify him of the denial of the appeal, resulting in his untimely PCRA filing. The Superior Court noted that the ineffectiveness of counsel does not fall into one of the enumerated exceptions to the PCRA statute of limitations. Moreover, the Superior Court found that Camilo's delay in filing his PCRA petition after he had knowledge of the denial of his direct appeal violated the PCRA's time requirements. *See*

On November 14, 2005, Camilo filed this instant petition for habeas corpus, claiming: 1) his guilty plea was unlawfully induced by counsel's assurance that he would receive a 5-10 year sentence; and 2) Camilo was denied due process by the Superior Court's failure to timely notify him of the denial of his direct appeal.<sup>5</sup>

In his R&R, Magistrate Judge Jacob P. Hart concluded that the instant habeas petition was filed after the habeas statutory deadline and, absent any showing of extraordinary circumstances, is untimely for failure to meet the statute of limitations pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").

Camilo's conviction became final on July 26, 2000, when the time expired for Camilo to seek discretionary review in his direct appeal. *See* PA. R. APP. P. 1113(a) (requiring a petition for allowance of appeal to be filed within 30 days of a lower court decision.) Pursuant to the AEDPA, Camilo's correct habeas limitation period expired on July 26, 2001. However, Camilo filed his habeas petition on November 14, 2005, four (4) years, three (3) months and twenty (20) days after his correct habeas limitation period had expired. Accordingly, Camilo's petition is clearly untimely under 28 U.S.C. §2244(d).

2. Petitioner's Objections to the Magistrate Judge's Report and Recommendation are

**OVERRULED;**

---

*Commonwealth v. Camilo*, 888 A.2d 3 (2005). Camilo did not seek discretionary review in the Pennsylvania Supreme Court.

<sup>5</sup> In his second claim, Camilo argues, as he did in the state courts, that the Superior Court's failure to notify him of the disposition of his direct appeal constitutes an exception the PCRA's one-year statute of limitations.

Camilo filed timely objections to the R&R on May 22, 2006.<sup>6</sup> This Court reviews de novo those portions of Magistrate Judge Hart's R&R to which Camilo objects. 28 U.S.C. § 636(b)(1)(2004). Camilo objects to: 1) Magistrate Judge Hart's *sua sponte* decision to raise the statute of limitations pursuant to the AEDPA; and 2) Magistrate Judge Hart's conclusion that Petitioner's failure to obtain information regarding his appeal during its pendency or the one year and a half after it was decided establishes that Petitioner was not reasonably diligent in investigating his claims, as is required for equitable tolling.

In regards to Camilo's first objection, despite the District Attorney haven mistakenly misstated that Camilo's petition was timely filed, the record reflects that Petitioner's petition was untimely. Although the District Attorney failed to raise the statute of limitations defense, it does not bar this court from doing so on its own. *See United States v. Bendolph*, 409 F.3d 155, 164 (3d Cir. 2005); *see also Long v. Wilson*, 393 F.3d 390 (3d Cir. 2004) (district court may raise the statute of limitations *sua sponte*.) Accordingly, Camilo's objection to Magistrate Judge Hart's *sua sponte* application of the statute of limitations is unsupported.<sup>7</sup>

Next, the Court addresses Camilo's second objection to Magistrate Jude Hart's R&R. With the passage of the AEDPA, Congress enacted a one-year limitations period for federal habeas corpus petitions. 28 U.S.C. § 2244(d). Accordingly, the habeas petition must be filed within one year from the date on which the petitioner's judgment of conviction becomes final. 28 U.S.C. § 2244(d)(1). As previously stated, Camilo's habeas petition is untimely. However, Camilo counters that his petition is timely because he was entitled to equitable tolling during the time in which his PCRA

---

<sup>6</sup> This Court granted Petitioner a thirty (30) day extension to file an objection to the R&R in its Order (Doc. 10, filed May 1, 2006). Camilo filed his Objections on May 22, 2006 (Doc. 11).

<sup>7</sup> Moreover, Camilo fails to present any reason or evidence in support of his initial objection.

petition was pending. (Obj. to R&R by Pet'r at 1-4.) The record reflects that the state courts ultimately found that Camilo's PCRA petition was untimely filed on April 19, 2002, after the habeas limitations period had already expired. The Supreme Court has held that "[w]hen a post-conviction petition is untimely under state law, 'that [is] the end of the matter' for purposes of § 2244(d)(2)." *Pace v. DiGuglielmo*, 544 U.S. 408, 414 (2005) (an untimely filed petition for state post conviction relief does not statutorily toll the limitations period). Accordingly, because the state court has rejected Camilo's post-conviction petition as untimely under state law, the petition was not properly filed and Camilo is not entitled to statutory tolling under § 2244(d)(2).

Moreover, the Third Circuit has held that the habeas limitations period is subject to equitable tolling in very narrow circumstances: 1) if the defendant has actively misled the plaintiff; 2) if the plaintiff has in some extraordinary way been prevented from asserting his rights; 3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum; or 4) if the claimant received inadequate notice of his rights to file suit, a motion for appointment of counsel is pending, or where the court has misled the plaintiff into believing that he had done everything required of him. *Jones v. Morton*, 195 F.3d 153, 159 (3d Cir. 1999). However, equitable tolling is to be invoked "only sparingly," see *United States v. Midgley*, 142 F.3d 174, 179 (3d Cir. 1998), and only when the petitioner establishes that he exercised "reasonable diligence" in investigating and bringing the claims. *Miller v. New Jersey State Dep't of Corrections*, 145 F.3d 616, 618-619 (3d Cir. 1998) (citing *New Castle County v. Haliburton NUS Corp.*, 111 F.3d 1116, 1126 (3d Cir. 1997)). Here, considering the history of this case in state courts, Camilo's second claim for equitable tolling fails because he fails to establish any of the elements required, as well as proving that he was reasonably

diligent in investigating his claims.<sup>8</sup>

3. The Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, is **DENIED** and **DISMISSED**;
4. A certificate of appealability will **NOT ISSUE**;
5. The Clerk of the Court shall mark this case as **CLOSED**.

**BY THE COURT:**

**/s/ Petrese B. Tucker**

---

**Hon. Petrese B. Tucker, U.S.D.J.**

---

<sup>8</sup> According to a letter, attached to Camilo's April 19, 2002 PCRA petition, Camilo became aware of the disposition of his direct appeal sometime shortly before January 3, 2002. However, he failed to obtain information regarding his appeal during its pendency or the year and a half after it was decided. Moreover, even after he obtained information that the appeal had been decided, he failed to file his PCRA petition within sixty (60) days as required by the PCRA itself.