

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

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|--|---|---------------------|
| STANLEY FORD | : | CIVIL ACTION |
| Petitioner, | : | |
| | : | |
| vs. | : | NO. 06-1874 |
| GERALD L. ROZUM, Superintendent | : | |
| OF STATE CORRECTIONAL INSTITUTE | : | |
| AT SOMERSET; THE DISTRICT | : | |
| ATTORNEY OF THE COUNTY OF | : | |
| PHILADELPHIA; and THE ATTORNEY | : | |
| GENERAL OF THE STATE OF | : | |
| PENNSYLVANIA | : | |
| Respondents. | : | |

ORDER AND MEMORANDUM

ORDER

AND NOW, this 20th of September, 2006, upon careful and independent consideration of the Petition for Writ of Habeas Corpus filed by Stanley Ford, and the record in this case, and after review of the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated August 29, 2006, and Petitioner's Objections to the Magistrate's August 29, 2006 Report and Recommendation Denying Petition for Writ of Habeas Corpus, **IT IS ORDERED** as follows:

1. The Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated August 29, 2006, is **APPROVED** and **ADOPTED**;
2. Petitioner's Objections to the Magistrate's August 29, 2006 Report and Recommendation Denying Petition for Writ of Habeas Corpus are **OVERRULED**;
3. The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Stanley Ford is **DISMISSED**; and,
4. A certificate of appealability will not issue on the ground that petitioner has not made

a substantial showing of a denial of a constitutional right as required under 28 U.S.C. §2253(c)(2).

MEMORANDUM

This Court approves and adopts the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated August 29, 2006. In this Memorandum, the Court explains the basis of its ruling.

The Magistrate Judge recommended dismissal of the habeas corpus petition as untimely. The Court agrees with what is set forth in the Report and Recommendation on the issue of untimeliness. Specifically, petitioner had one day following denial of allocatur by the Pennsylvania Supreme Court on June 8, 2005, by which to file his habeas corpus petition, but he did not do so. The petition was not filed until May 3, 2006, almost 11 months after the deadline for filing.

Petitioner argued to the Magistrate Judge, and again argues in his Objections, that he is entitled to equitable tolling of the limitations period. That argument is based on petitioner's claim that his attorney delayed before filing the initial post-conviction petition, and that such delay is an extraordinary circumstance warranting equitable tolling.

The statute of limitations under Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2241, *et seq.*, is subject to equitable tolling. *Miller v. New Jersey State Dep't of Corr.*, 145 F.3d 616, 618 (3d Cir. 1998). The Third Circuit has set forth three circumstances permitting equitable tolling: (1) the defendant actively misled the plaintiff; (2) plaintiff was in some extraordinary way prevented from asserting his rights; or (3) plaintiff timely asserted his rights, but mistakenly did so in the wrong forum. *Jones v. Morton*, 195 F.3d

153, 159 (3d Cir. 1999). “In non-capital cases, attorney error, miscalculation, inadequate research, or other mistakes have not been found to rise to the ‘extraordinary’ circumstances required for equitable tolling.” *Fahy v. Horn*, 240 F.3d 239, 244 (3d Cir. 2001), *cert. denied*, 122 S. Ct. 323 (2001) (citing cases).

The sole ground asserted by petitioner for the application of equitable tolling is attorney error. That position was rejected by the *Fahy* court which ruled that attorney error does not qualify as an extraordinary circumstance warranting equitable tolling. Thus, the habeas petition must be dismissed as untimely. In view of the Court’s ruling on timeliness, it need not address the other issues presented in the Objections.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.