

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

OSSIE TRADER : CIVIL ACTION
 :
v. :
 :
COMMONWEALTH OF PENNSYLVANIA, :
et al. : NO. 10-cv-1656-JF

MEMORANDUM

Fullam, Sr. J.

September 30, 2010

In April 2010, Petitioner filed a petition for writ of habeas corpus challenging a 1984 conviction in state court. On August 25, 2010, I issued an Order in which I approved the Report and Recommendation of United States Magistrate Judge Jacob P. Hart and denied the petition for writ of habeas corpus. Petitioner has now filed a motion to alter or amend judgment. The motion will be denied.

In his motion, Petitioner argues that Magistrate Judge Hart erred in concluding that Petitioner failed to meet the in-custody requirement of 28 U.S.C. § 2254, and that the one-year period for filing a petition for writ of habeas corpus should be equitably tolled pursuant to Holland v. Florida, 130 S. Ct. 2549 (2010).

After reviewing the record, I conclude that neither argument has merit. There is no evidence supporting Petitioner's

claim that he is still on parole for his 1984 conviction, and I am bound by the Pennsylvania state courts' determination that Petitioner had already completed the sentence for his 1984 conviction at the time of his PCRA proceeding in 2008. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.").

I also conclude that the one-year statute of limitation for filing a petition for writ of habeas corpus should not be equitably tolled. Petitioner claims that his attorney failed to file an appeal despite instructions to do so. However, he provides no explanation for why it has taken him over 20 years to discover his attorney's failure to file an appeal, and thus there is no evidence that Petitioner has "[pursued] his rights diligently" as required by Holland. 130 S. Ct. at 2562.

An order will be entered.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

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ORDER

AND NOW, this 30th day of September 2010, upon consideration of the Petitioner's Motion Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure to Alter or Amend Judgment, IT IS ORDERED:

That the Petitioner's motion is DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.