

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

ANGEL M. SANCHEZ, : CIVIL ACTION
 : NO. 13-1699
 Petitioner, :
 :
 v. :
 :
 SUPERINTENDENT DANIEL BURNS, :
 et al., :
 :
 Respondent. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

May 22, 2014

Petitioner Angel Sanchez is a prisoner incarcerated at the State Correctional Institution in Marienville, Pennsylvania. Sanchez has filed a pro se application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to Magistrate Judge Carol Sandra Moore Wells for a Report and Recommendation, to which Sanchez has filed objections. For the reasons set forth below, the Court will approve and adopt the Report and Recommendation, overrule Sanchez's objections, and deny the petition with prejudice, without an evidentiary hearing.

I. BACKGROUND

Sanchez was tried and convicted in 2001 of first-degree murder, carrying firearms on a public street, possessing

instruments of a crime, and recklessly endangering another person. He received a mandatory life sentence for the murder conviction, as well as concurrent sentences of one to five years' imprisonment on each of the remaining charges. On appeal, the Pennsylvania Superior Court affirmed Sanchez's judgment of sentence. Sanchez then sought timely relief under Pennsylvania's Post Conviction Relief Act ("PCRA"), but his petition was denied and he did not appeal.

On May 1, 2012, Sanchez filed a second PCRA petition, asserting that his trial counsel was ineffective for failing to properly advise him regarding a pre-trial guilty plea offer. The PCRA court dismissed that petition as untimely on August 23, 2013. Sanchez filed an appeal, which is still pending in the Pennsylvania Superior Court.

With his second PCRA petition still pending, Sanchez filed the instant petition for federal habeas relief. The matter was referred to Magistrate Judge Carol Sandra Moore Wells, who issued a Report and Recommendation on January 15, 2014. According to Magistrate Judge Wells, Sanchez asserts in his petition that his trial counsel was ineffective for three reasons: (1) failing to impeach the Commonwealth's witness; (2) failing to present exculpatory evidence; and (3) providing erroneous advice regarding the Commonwealth's pre-trial negotiated guilty plea offer. Magistrate Judge Wells recommends

that the Court dismiss the petition in its entirety as untimely. Sanchez has filed objections to that recommendation, and the matter is now ripe for resolution.

II. LEGAL STANDARD

The Court undertakes a de novo review of the portions of the Report and Recommendation to which a party has objected. See 28 U.S.C. § 636(b)(1); Cont'l Cas. Co. v. Dominick D'Andrea, Inc., 150 F.3d 245, 250 (3d Cir. 1998). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a one-year period of limitations on the filing of habeas corpus petitions. 28 U.S.C. § 2244(d)(1). That period begins to run from the latest of the following four possible dates: (1) "the date on which the judgment became final;" (2) the date on which an unlawful state-created impediment to filing an application is removed; (3) "the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review;" or (4) "the date on which the factual

predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” Id.

III. DISCUSSION

In his objections, Sanchez clarifies that he is only asserting one ground for relief: that he was denied effective assistance of counsel due to his counsel’s erroneous advice to reject a pre-trial plea offer. Therefore, to the extent that Sanchez originally sought to bring the two additional grounds for relief identified by Magistrate Judge Wells, the Court considers those grounds to be withdrawn.

Sanchez’s primary substantive objection to the Report and Recommendation is that Magistrate Judge Wells erred in concluding that his petition is untimely. According to Sanchez, his application for habeas corpus relief is timely because it was filed within one year of the Supreme Court’s decision in Lafler v. Cooper, 132 S. Ct. 1376 (2012). In order for Sanchez’s application to be considered timely on that basis, Lafler v. Cooper must have “newly recognized” a constitutional right and that right must be “retroactively applicable to cases on collateral review.” See 28 U.S.C. § 2244(d)(1)(C). Magistrate Judge Wells concluded that Lafler did not announce a new constitutional right that applies retroactively, and Sanchez contends that conclusion is erroneous.

In Lafler, the Supreme Court addressed how to apply the “prejudice” prong of Strickland v. Washington when ineffective assistance of counsel “results in a rejection of [a] plea offer and the defendant is convicted at the ensuing trial.” 132 S. Ct. at 1384 (citing Strickland v. Washington, 466 U.S. 668 (1984)). The Court had previously evaluated whether the improvident acceptance of a guilty plea could satisfy Strickland, and it held that a petitioner can demonstrate prejudice in such a situation by showing “that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pleaded guilty and would have insisted on going to trial.” Id. at 1384-85 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)) (alteration omitted). In Lafler, the Court expanded upon that holding, concluding that, when a defendant improvidently rejects a plea and goes to trial, he can establish prejudice by showing “that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court . . . , that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer’s terms would have been less severe than under the judgment and sentence that in fact were imposed.” Id. at 1385.

The Court agrees with Magistrate Judge Wells that Lafler v. Cooper did not recognize a new constitutional right. Although the Third Circuit has not yet directly addressed this issue,

almost every other circuit has done so, and they have uniformly reached the conclusion that Lafler did not announce a new rule, but instead was “merely an application of the Sixth Amendment right to counsel, as defined in Strickland, to a specific factual context.” In re Perez, 682 F.3d 930, 932 (11th Cir. 2012)); see also Pagan-San Miguel v. United States, 736 F.3d 44 (1st Cir. 2013); In re Liddell, 722 F.3d 737 (6th Cir. 2013); In re Graham, 714 F.3d 1181 (10th Cir. 2013); Gallagher v. United States, 711 F.3d 315 (2d Cir. 2013); Williams v. United States, 705 F.3d 293 (8th Cir. 2013); In re King, 697 F.3d 1189 (5th Cir. 2012); Buenrostro v. United States, 697 F.3d 1137 (9th Cir. 2012); Hare v. United States, 688 F.3d 878 (7th Cir. 2012). As many of those cases explain, the Supreme Court in Lafler “repeatedly and clearly spoke of applying an established rule to the present facts,” and the case was “decided in the post-conviction context, where state courts ordinarily are not held to proper application of new rules.” Pagan-San Miguel, 736 F.3d at 45 (quoting Hare, 688 F.3d at 879) (emphasis in original).

That analysis is further reinforced by the fact that, even before the Supreme Court’s opinion in Lafler, the Third Circuit recognized that counsel can be constitutionally ineffective for failing to properly advise a defendant during plea negotiations, such that the defendant mistakenly goes to trial. See United States v. Booth, 432 F.3d 542, 546-47 (3d Cir.

2005). In Booth, the court applied Strickland in a federal habeas corpus case addressing counsel's failure to inform defendant that he could enter an "open" guilty plea, which resulted in the defendant proceeding to trial and being convicted. Applying existing case law, the court determined that the defendant could establish prejudice by demonstrating that "but for his trial attorney's alleged ineffectiveness, he would have likely received a lower sentence." Id. at 546-47 (citing Hill, 474 U.S. at 58). Thus, well before the Supreme Court decided Lafler, the Third Circuit reached essentially the same conclusion based upon existing precedent, suggesting that - at least in this circuit - Lafler did not announce a "new" rule.

In light of that precedent, the Court concludes that Lafler did not recognize a new constitutional right. Accordingly, a new one-year limitation period did not begin to run as of the date of that decision, and Sanchez's request for relief is untimely.¹

IV. CONCLUSION

For the foregoing reasons, the Court will adopt

¹ For the same reason, the Court agrees that Sanchez's federal habeas proceedings should not be stayed pending exhaustion of this claim in state court. Sanchez's unexhausted Lafler claim is not meritorious, and so he is not entitled to the "stay and abey" procedure provided for in Rhines v. Weber, 544 U.S. 269, 275-76 (2005).

Magistrate Judge Wells's Report and Recommendation, overrule Petitioner's objections, and dismiss Petitioner's application with prejudice. An appropriate order follows.

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ORDER

AND NOW, this **22nd** day of **May, 2014**, after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells (ECF No. 20) and Petitioner's objections thereto (ECF No. 25), and for the reasons set forth in the accompanying memorandum, it is hereby **ORDERED** as follows:

- (1) The Report and Recommendation is **APPROVED** and **ADOPTED**;
- (2) Petitioner's Objections to the Report and Recommendation are **OVERRULED**;
- (3) The Petition for a Writ of Habeas Corpus (ECF No. 1) is **DENIED** and **DISMISSED WITH PREJUDICE**;
- (4) A certificate of appealability shall not issue; and
- (5) The Clerk shall mark this case **CLOSED**.

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.