

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

JUAN MARRERO : CIVIL ACTION
 :
 v. :
 :
 DONALD T. VAUGHN, et al. : No. 98-455

MEMORANDUM AND ORDER

Norma L. Shapiro, J.

December 9, 1998

Petitioner Juan Marrero ("Marrero"), filing a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, alleged that the prosecutor in his criminal trial concealed and failed to disclose certain evidence in violation of his constitutional rights. The petition for habeas corpus was referred to United States Magistrate Judge M. Faith Angell ("Judge Angell") for a Report and Recommendation. Judge Angell recommended that the petition be denied and dismissed as time barred under § 2244(d)(1).

Marrero, filing objections to the Report and Recommendation, argued that Judge Angell incorrectly refused to toll the one year statute of limitations of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). See 28 U.S.C. § 2244(d)(1) and (2).

The AEDPA gives one year in which to file for post-conviction relief. 28 U.S.C. § 2244(d)(1). For those prisoners with existing claims, the one year period begins with the

effective date of the AEDPA, April 24, 1996. Burns v. Morton, 134 F.3d 109 (3d Cir. 1998).

Marrero argues that Magistrate Judge Angell incorrectly applied 28 U.S.C. § 2244(d)(2), tolling the one year period of limitation for any petition "properly filed" in state court, including, as here, a secondary petition under the amended Post Conviction Relief Act, 42 Pa. Cons. Stat. Ann. § 9543 ("PCRA"). A "properly filed application" 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). Marrero's second state petition, dismissed as untimely filed, was not a "properly filed application" within the meaning of the AEDPA; it did not toll the running of the AEDPA one year limitation period.

There are no exceptional circumstances here that warrant equitable tolling of the one year period. Marrero suggests that his incarceration prevented his learning of the AEDPA sooner. The one year period for existing claims was extended to one year from the AEDPA effective date by the Court of Appeals in Burns to help ensure that all prisoners had adequate notice of the new act. Burns, 134 F.3d at 111. Anything more than that period, absent unusual circumstances not present here, is not countenanced by this governing appellate decision.

Judge Angell correctly determined that Marrero's second application for post-conviction relief, not a "properly filed

application" within the meaning of Lovasz v. Vaughn, did not toll the AEDPA one year period of limitations so that Marrero's petition for habeas corpus time-barred; her Report and Recommendation will be approved and adopted.

An appropriate order follows.

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ORDER

AND NOW, this 9th day of December, 1998, after careful and independent consideration of the petition for a writ of habeas

corpus and the answer thereto, and after review of the Report and Recommendation of United States Magistrate Judge M. Faith Angell, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. The petition for a writ of habeas corpus is **DENIED** and **DISMISSED** as time-barred under 28 U.S.C. § 2244(d)(1).
3. Petitioner's Motion(s) to Strike Respondents' Second Motion for Enlargement of Time to File Response Nunc Pro Tunc [Docket Entries Nos. 9 & 10] are **DENIED**.
4. Petitioner's Motion to Supplement the Pleading [Docket Entry No. 15] is **DENIED**.

There is no probable cause to issue a certificate of appealability.

J.