

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

JOSE AYALA,	:	CIVIL ACTION
Petitioner	:	
	:	
v.	:	
	:	
SUPERINTENDANT, SCI	:	
HUNTINGTON, <i>et al.</i> ,	:	
Respondents	:	NO. 01-1410

ORDER – MEMORANDUM

Ludwig, J.

AND NOW, this 7th day of February, 2002 the objections of petitioner Jose Ayala, *pro se*, to Magistrate Judge Scuderi’s Report and Recommendation, filed August 27, 2001, are overruled, the Report and Recommendation is approved and adopted, as supplemented by memorandum, and the petition for writ of habeas corpus, 28 U.S.C. § 2254, is denied.

Petitioner’s claim is barred by the one-year limitations period set forth in 28 U.S.C. § 2244(d)(1).¹ In the absence of equitable tolling, the limitations period expired in late October 1997, well before March 22, 2001 when petitioner filed this federal habeas petition. See Report and Recommendation at 5-8.

Petitioner asserts that the limitations period should be equitably tolled from December 30, 1996, when he filed his final Post-Conviction Relief Act (PCRA) petition, until February 14, 2001, when he claims to have first learned that the petition was denied. Equitable tolling is appropriate where a petitioner “has ‘in some extraordinary way ... been

¹“The limitation period shall run from...the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review,” but “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244(d)(1).

prevented from asserting his or her rights,” despite exercising “reasonable diligence in investigating and bringing [his or her] claims....” Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999) (quoting Miller v. New Jersey State Department of Corr., 145 F.3d 616, 618-19 (3d Cir. 1998)). While respondent submitted a copy of a receipt for certified mail purportedly showing that petitioner was mailed notice on June 5, 1997 of the denial of his final PCRA petition,² petitioner denies having received it.³ Petitioner counters with copies of four letters he says he sent to the PCRA court (dated April 24, 1997; August 11, 1997; July 17, 1998; and March 3, 1999) inquiring about the status of his petition. According to his affidavit, petitioner received no response to these letters and did not learn that his petition was denied until his family visited the office of the clerk of court on February 14, 2001. Ayala Affidavit. Nevertheless, these circumstances in non-capital cases are insufficient for equitable tolling. See Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001) (reviewing authority). Accordingly, the petition must be denied.

Edmund V. Ludwig, J.

²Exhibit “C” to respondent’s Response to habeas petition.

³Petitioner’s Objections to Report and Recommendation at 2.