

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

DANIEL CARTER	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	
DONALD T. VAUGHN, et al.	:	
Defendants.	:	No. 00-3886

MEMORANDUM AND ORDER

J. M. KELLY, J.

JULY 10, 2002

Presently before the Court are the Petition for a writ of habeas corpus filed by Daniel Carter, Petitioner, the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa, and the Petitioner's objections thereto. Magistrate Judge Caracappa recommended dismissing Petitioner's federal habeas corpus petition as untimely under the Anti-Terrorism and Death Penalty Act (AEDPA) statute of limitations. 28 U.S.C. §§ 2241-2255 (1994) (amended 1996). Petitioner was convicted of first-degree murder, possession of an instrument of crime and criminal conspiracy in 1994. He is currently serving a life sentence at the State Correctional Institution at Graterford, Pennsylvania.

Procedural History

On February 1, 1994, after a bench trial in the Philadelphia County Court of Common Pleas, Petitioner was convicted for the fatal shooting of one Darryl Chinn in 1992. Upon the denial of

post-verdict motions, Petitioner appealed his conviction to the Superior Court of Pennsylvania. His appeal was denied on June 6, 1995. See Commonwealth v. Carter, 661 A.2d 390 (Pa. Super. Ct. 1995). Subsequently, on April 9, 1996, the Supreme Court of Pennsylvania denied Carter's petition for allowance of appeal. See Commonwealth v. Carter, 675 A.2d 1242 (Pa. 1996). As a result, for purposes of collateral relief, Carter's conviction became final on July 8, 1996, upon the expiration of the 90 days allowed for filing a petition for writ of certiorari in the United States Supreme Court following his direct state appeal. See Sup. Ct. R. 13(1); Kapral v. United States, 166 F.3d 565, 567 (3d Cir. 1999).

Carter's deadline for filing both his state and federal petition was July 7, 1997, exactly one year following his final conviction. On July 7, 1997, Carter filed a pro se petition for collateral relief under the Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. Ann. §§ 9541-46 (West 1998). On January 20, 1999, the PCRA court denied Carter his amended PCRA petition, which was filed by an appointed counsel. On March 7, 2000, the Superior Court of Pennsylvania affirmed the PCRA's court's denial of relief. See Commonwealth v. Carter, No. 0044 EDA 99 (Pa. Super. Ct. Mar. 7, 2000). On July 5, 2000, the Supreme Court of Pennsylvania denied Carter's request for allocatur. See Commonwealth v. Carter, 785 A.2d 87 (Pa. 2000)

(Table).

On August 1, 2000, Petitioner filed a federal habeas corpus petition, pursuant to 28 U.S.C. § 2254. Petitioner executed this petition on July 29, 2000 and the petition was probably handed over to prison officials for mailing on the same day. See Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998)(holding that a pro se petitioner's habeas petition is deemed filed at the moment he delivers it to prison officials for mailing to the district court). Counsel entered her appearance and filed an amended petition and brief on March 7, 2001. The Commonwealth filed a response asserting that the petition should be dismissed because it was untimely under the AEDPA. Magistrate Judge Caracappa determined that the petition was indeed untimely and on March 14, 2002, recommended to this Court that the petition be dismissed for failure to satisfy the statute of limitations under the AEDPA. Carter filed objections.

Discussion

This Court is to make a de novo determination of those portions of the Magistrate Judge's Report to which specific objections have been made. See Fed. R. Civ. P. 72(b). Although the Petitioner had fully briefed and argued the substantive merits of his claim for collateral relief, the Court will limit its discussions to the statute of limitations under the AEDPA for

the purposes of this Motion.

Statute of Limitations under AEDPA

The statute of limitations under the AEDPA is as follows:

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action.

Carter's judgment became final on July 8, 1996. As such, absent statutory or equitable tolling, Carter should have filed his federal habeas petition on or before July 7, 1997.¹ Rather than

¹ Carter argued, and Magistrate Judge Caracappa agreed, that the deadline should be calculated as on or before July 8, 1997 under Federal Rule of Civil Procedure 6 which states:

the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

If this rule were to apply, July 8, 1997 would be the deadline. In the Third Circuit, however, Federal Rule of Civil Procedure 6 does not apply in calculating the statute of limitations under the AEDPA. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998); Stokes v. District Attorney of County of Philadelphia, 247

filing his federal petition, Carter filed a PCRA petition.

Statutory Tolling

Because Carter filed a timely PCRA petition, a certain period of statutory tolling under the AEDPA applied to him. 28 U.S.C. § 2244(d)(2) provides that the time during which the PCRA petition and its timely appeals were pending is not included in the one year calculation. As such, the statute of limitations on Carter's federal habeas petition was statutorily tolled pending the final resolution of Carter's July 1997 PCRA petition. The PCRA petition was finally resolved on July 5, 2000 when the Pennsylvania Supreme Court denied Carter's request for allocatur. Unfortunately for Carter, on that same day, the statutory tolling on his federal habeas petition also came to an end.² His federal

F.3d 539,541 (3d Cir. 2001) (calculating July 1, 1998 as the deadline when the final conviction was dated July 2, 1997). As such, since the date of Carter's final state conviction is July 8, 1996, the filing deadline for Carter's federal habeas petition is on or before July 7, 1997. In any event, this one day difference does not resuscitate Carter's petition because under his own calculations, he concedes that he missed the deadline by at least 19 days.

² Petitioner argues that the prisoner mail box rule should be extended to his state petition, making July 3, 1997, the date he handed the petition to prison officials, the day of his PCRA petition filing. If this rule were to apply, then Petitioner would have had 4 additional days left on his statute of limitations. Under this analysis, then, Petitioner should have filed on or before July 9, 2000, four days after the Pennsylvania Supreme Court's denial of allocatur. Petitioner did not file his federal petition until July 29, 2000. As such, even applying the mail box rule as Petitioner argued, he is still untimely.

petition, therefore, had to be filed on that day or it would be considered untimely. Petitioner, however, did not file his federal habeas petition until July 29, 2000.

Petitioner argues that an additional 90 days, in which Petitioner could have sought certiorari to the Supreme Court following the Pennsylvania Supreme Court's denial of allocatur on the PCRA petition, should be tacked on to the tolling period. This would make his August 1, 2000 filing timely. The Third Circuit has squarely addressed this very issue, holding "the ninety day period during which a prisoner may file for a writ of certiorari in the United States Supreme Court from the denial of his state post-conviction petition does not toll the one year limitations period set forth at 28 U.S.C. § 2244(d)(2)." Stokes v. District Attorney of County of Philadelphia, 247 F.3d 539, 543 (3d Cir. 2001). As such, Petitioner's argument is to no avail.

Equitable Tolling

Petitioner seeks equitable tolling, claiming he did not know of the Pennsylvania Supreme Court's order of April 9, 1996, which finalized his conviction, until early 1997 or May of 1997.³

³ In support of this factual assertion, Petitioner has presented the following documents: (1) Letters dated November 25, 1996 and March 20, 1997 by Petitioner to his former attorney, Patrick J. Egan, enquiring of the status of his direct appeal; (2) Affidavit of Thomas Brian Cotton, an employee of the Para Professional Law Clinic at Graterford regarding a letter by Petitioner to the Pennsylvania Supreme Court; (3) Correspondence

While equitable tolling may be applied to AEDPA statute of limitations, it is to be sparingly used. See Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 617-618 (3d Cir. 1998). Miller instructs that equitable tolling is proper only when the "principles of equity would make [the] rigid application [of a limitation period] unfair." Id. at 618 (citation omitted). Generally, this will occur when the petitioner has "in some extraordinary way . . . been prevented from asserting his or her rights." Id. Moreover, the petitioner must show that he or she "exercised reasonable diligence in investigating and bringing [the] claims." Mere excusable neglect is not sufficient to trigger equitable tolling. Id. at 618-19. (citations omitted).

The Third Circuit further explained that equitable tolling "may be appropriate if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights, or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999) (citations omitted). In the final analysis, "a statute of limitations should be tolled only in the rare situation where equitable

by letter between Petitioner's current counsel, Carole L. McHugh, and the warden regarding the incoming mail log from April 9, 1996 to July 7, 1996; and (4) Affidavit of former counsel, Patrick J. Egan. Magistrate Judge Caracappa denied Petitioner's request for a discovery and evidentiary hearing on this matter. Instead, she assumed the facts as alleged by Petitioner but still found Carter was not entitled to equitable tolling.

tolling is demanded by sound legal principles as well as the interests of justice." Id. "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).

As Magistrate Judge Caracappa did, this Court will assume, as Petitioner claims, that he in fact did not learn of the Pennsylvania Supreme Court's ruling finalizing his conviction until May of 1997. Even assuming this, however, Carter is not entitled to equitable tolling.

First, there is no evidence that the state itself failed to give notice. It seems more likely that Carter's attorney at the time failed to advise Carter as to the Pennsylvania Supreme Court's decision. After filing with the Pennsylvania Supreme Court, Carter waited over a year before writing to his attorney. Therefore, Carter failed to exercise reasonable diligence in pursuing his claims. Lastly, while his attorney's neglect may have led to Carter's ignorance regarding the Pennsylvania Supreme Court's decision until May of 1997, Carter became aware of his predicament before the July 1997 deadline applicable to both his federal and state post conviction petitions. In fact, Carter filed his state petition on time. In the face of identical deadlines, Carter chose the state route in attempting to attack

his conviction collaterally and is now stuck with it.

New Evidence Exception

Finally, Carter complains that Magistrate Judge Caracappa did not discuss his claim of innocence. Under § 2244(d)(1)(D), actual innocence claims that meet the required showing of new evidence restarts the limitations period. Since Carter's claims do not involve any new evidence, this provision is inapplicable.

Accordingly, Carter's Petition is hereby dismissed as untimely under the AEDPA.

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O R D E R

AND NOW, on this 10th Day of July, 2002, upon consideration of the Report and Recommendation of Magistrate Judge Caracappa (Doc. No. 42) and the Petitioner's Objections thereto (Doc. No. 45), it is hereby **ORDERED**:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**.
Petitioner, Daniel Carter's Objections are **DENIED**.
2. Daniel Carter's Petition for writ of habeas corpus is **DENIED** with prejudice.
3. There is no probable cause to issue a Certificate of Appealability.
4. The Clerk of the Court shall mark this case **CLOSED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.