

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

STEVEN ACKERIDGE : CIVIL ACTION
: :
vs. : :
: :
JAMES M. MORGAN, et al. : NO. 99-6570

MEMORANDUM

ROBERT F. KELLY, Sr. J.

DECEMBER 7, 2004

On April 3, 2000, this Court approved the Magistrate Judge's Report and Recommendation dismissing the petition for writ of habeas corpus for not being timely filed and not meeting any of the exceptions to the limitation period under 28 U.S.C. § 2244(d)(i).

After Appeal, the case was remanded to this Court to determine whether Ackeridge was entitled to equitable tolling of the limitation period because of his alleged mental incapacities.

We again referred this matter to the Magistrate Judge who held hearings and submitted a Report and Recommendation on September 16, 2004. No objections were filed in the time allowed, and on October 12, 2004 we adopted the Report and Recommendation dismissing the habeas corpus petition. A motion to reconsider was filed on October 26, 2004.¹

Petitioner filed an Appeal before we could rule on the motion. On December 3, 2004 the Court of Appeals stayed the Appeal pending disposition by this Court of the motion to

¹Upon receipt of the motion to reconsider the Court wrote to petitioner's counsel, sending her a copy of the pro se motion and inquiring as to whether she wished to supplement it. She responded by letter that she had advised Mr. Ackeridge that, "I did not believe that there were any further legal avenues of arguable merit to pursue. Accordingly, I do not wish to supplement Mr. Ackeridge's motion or otherwise litigate the motion for reconsideration on his behalf." Rather than deal with yet another timeliness issue as to the motion to reconsider I decided that it would be simpler to deal with the motion to reconsider on its merits.

reconsider.

DISCUSSION

Paragraph 2 on page 1 of the motion contains an allegation that no objections were filed by his counsel because of “her personal knowledge of former trial counsel.” In the first instance this is moot because we are allowing the motion to reconsider where the objections are raised. Secondly, to the extent that this is alleging ineffective assistance of counsel it is barred by 28 U.S.C. § 2254(i).

Paragraph 3 on page 1 generally complains that the trial judge asked defense counsel about his client’s mental condition and that the defense counsel was not an expert and should not have made a statement in that regard. This apparently refers to what took place at the time Mr. Ackeridge entered a plea of guilty. The issue before the Magistrate Judge was the mental state of petitioner during the one year period granted to him to file for habeas corpus relief. The Report and Recommendation does not rely on nor even refer to this alleged statement by defense counsel.²

Paragraph 1 of page 2 repeats the same argument with respect to the alleged non-expert opinion of his trial lawyer.

Paragraph 2 on page 2 reiterates that same argument and includes also allegations that trial counsel was ineffective for not appealing the sentence. Again the purpose of the case being returned to this Court from the Appellate Court was to determine if the one year statute of limitations that applies to habeas corpus was equitably tolled because of alleged mental

²At a plea of guilty hearing where an issue is raised as to a defendant’s competence, the trial judge would be expected to make an inquiry of counsel concerning defendant’s ability to understand and cooperate with counsel in his defense of the case.

incapacities of the petitioner.

Paragraph 3 of page 2 of the petition appears to deal exclusively with matters that would be perhaps the subject of the habeas corpus not the issue before this Court which is equitable tolling.

Paragraph 4 of page 2 and paragraphs 1 through 5 of page 3 all deal with the substance of the habeas corpus petition, not the issue before the Magistrate Judge which was whether Ackeridge established sufficient cause for equitable tolling of the statute of limitations because of his mental deficiencies.

The entire substance of page 4 of the petition deals with a statement on page 6, paragraph 3 of the Report and Recommendation where the Magistrate Judge referred to a finding in the Philadelphia prison health records indicating that petitioner's final diagnosis was depression. Petitioner contends that the use of a physician's report on intake is insufficient for any mental health evaluation. I find that it was reliable evidence for the Magistrate Judge to rely on in dealing with the issue before him and I point out that it was only one of a number of factors the Magistrate Judge relied on in making his ultimate finding.

The Magistrate Judge reviewed the testimony of Allan M. Tepper, J.D., Psy.D., a forensic and clinical psychologist called by the petitioner, noting that he did not testify that any mental health ailment precluded Ackeridge from filing a timely habeas corpus petition. He reviewed also the prison records noting that they did not support Ackeridge's claim. The records from S C I - Graterford noted a diagnosis of depression, there was no diagnosis of schizophrenia or psychosis.

The Magistrate Judge reviewed a March 19, 1995 mental health evaluation by

Robert Rollins, M.D., a psychiatrist at the Dortha Dicks Hospital in Raleigh, North Carolina.

This evaluation was conducted because Ackeridge was facing armed robbery charges in North Carolina. The Magistrate Judge noted that the report revealed that Dr. Rollins found no evidence of schizophrenia or psychosis and throughout the report Dr. Rollins expressed concern that Ackeridge was malingering. Dr. Rollins concluded that Ackeridge was “capable of proceeding to trial,” and “does not have a disorder that would relieve him of responsibility for his actions.” The Magistrate Judge found this report particularly persuasive because of its thoroughness and its proximity in time to the crimes that were the subject of the petition.

The Magistrate Judge reviewed numerous inmate requests made by Ackeridge during the period in question. He felt that from these it was clear that Ackeridge was able to communicate with prison officials to obtain information, sign up for groups, request cell reassignments, and arrange for special visits (and possibly marriage) with his girlfriend.

Based upon the foregoing I find that the petitioner’s motion to reconsider this Court’s approval and adoption of the Report and Recommendation is without merit and will be denied.

We therefore enter the following Order.

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ORDER

AND NOW, this 7th day of December, 2004, after consideration of the motion for reconsideration it is hereby **DENIED**.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE