

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

JAINATH MARAJ : CIVIL ACTION
: :
: :
v. : :
: :
FRANK D. GILLIS, et al. : NO. 04-1544

O'NEILL, J. JANUARY 4, 2005

MEMORANDUM

Petitioner, Jainath Maraj (formerly Jainath Gonzales), representing himself pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on April 8, 2004. Maraj is currently incarcerated in the Coal Township State Correctional Institution. Before me now is Magistrate Judge Scuderi's Report and Recommendation and petitioner's objection thereto.¹

Judge Scuderi determined that absent a showing pursuant to 28 U.S.C. § 2244(d)(1), Maraj's petition for habeas corpus relief is barred by the AEDPA's one year limitation period. Maraj v. Gillis, No. 04-1544, 2004 WL 2429847 (E.D. Pa. Oct. 28, 2004). Subsequently, Maraj filed an objection, on December 10, 2004, asserting that his petition for habeas corpus relief is not time-barred because he did not receive the Superior Court's February 24th judgment until June 7, 2000--seventy four days after the judgment became final--as a result of the failure of the Clerk of Court's office of the Superior Court to mail a copy of the judgment to Maraj or his

¹Judge Scuderi aptly discussed the applicable facts and law in his Report and Recommendation. Maraj v. Gillis, No. 04-1544, 2004 WL 2429847 (E.D. Pa. Oct. 28, 2004). I will therefore adopt Judge Scuderi's Report and Recommendation in its entirety. However, because Maraj has raised new issues in his objection, I will address these issues in this opinion.

counsel. Specifically, Maraj argues: (1) that this failure to notify constitutes an impediment to filing his habeas petition caused by state action; and (2) that this failure to notify constitutes an extraordinary circumstance demanding equitable tolling of the one year limitation period.

I. Statutory Tolling

As Judge Scuderi reported, 28 U.S.C. § 2244(d)(1)(B) provides that the one year limitation period shall run from the latest of “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.”

Maraj asserts in his objection that he did not receive the Superior Court’s February 24th judgment until June 7, 2000 because the Clerk of Court’s office of the Superior Court failed to mail a copy of the judgment to Maraj or his counsel. Pursuant to this section, Maraj argues that this clerical error impeded his ability to file the instant habeas petition and was created by state action in violation of the Constitution or laws of the United States. Thus, Maraj argues that the limitation period should not have begun to run until the Pennsylvania Supreme Court denied allowance of appeal on September 26, 2000. According to Maraj’s argument, the limitation period would have been tolled when he filed his second PCRA petition, on March 9, 2001--164 days into the limitation period. The limitation period would begin to run again when the Pennsylvania Supreme Court denied Maraj’s application for allowance to appeal on his second PCRA petition, on September 17, 2003. Maraj would thus have 201 remaining days in which to file his habeas petition. Maraj asserts that the limitation period would be tolled again when he filed his third PCRA petition on February 11, 2004--311 days into the limitation period. This

would leave him with 54 remaining days to file his habeas petition.² Finally, Maraj argues that when he filed his habeas petition on March 25, 2004--354 days into the limitation period--he still had eleven remaining days in which to file the petition in a timely manner. Thus, Maraj argues that his habeas petition was timely under Section 2244.

Although Maraj alleges that this clerical error was a form of state action, he has failed to allege how it was a violation of the Constitution or laws of the United States. I agree with Magistrate Judge Scuderi that Maraj has failed to present a claim for statutory tolling, and therefore adopt his report in holding that Maraj is barred from asserting a habeas petition, unless the instant petition is subject to equitable tolling.

II. Equitable Tolling

As Judge Scuderi noted, the Court of Appeals has established three circumstances in which equitable tolling is justified: “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, but has mistakenly done so in the wrong forum.” Jones v. Morton, 195 F.3d 153, 159 (3d Cir.1999) quoting United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998) (internal quotations omitted).

Maraj argues that the fact that neither he nor his counsel received the Superior Court’s February 24th judgment until June 7, 2000 constitutes an extraordinary circumstance which merits equitable tolling. Assuming, without deciding, that Maraj’s factual assertion is correct,

²Alternatively, Maraj asserts that the limitation period would be tolled again when he filed his “motion to correct an illegally duplicitous sentence” on March 9, 2004--338 days into the limitation period--and resumed when this motion was denied on May 24, 2004. This would leave him with 27 remaining days to file the habeas petition in a timely manner.

Maraj has failed to allege or demonstrate how this circumstance *prevented* him from filing his habeas petition in a timely manner. As the Court of Appeals has noted: “The word ‘prevent’ requires the petitioner to demonstrate a causal relationship between the extraordinary circumstances on which the claim for equitable tolling rests and the lateness of his filing.” Brown v. Shannon, 322 F.3d 768, 773 (3d Cir. 2003) quoting Valverde v. Stinson, 224 F.3d 129, 134 (2d Cir. 2000) (holding that “the confiscation of a prisoner’s legal papers by a corrections officer shortly before the filing deadline may justify equitable tolling and permit the filing of a petition after the statute of limitations ordinarily would have run.”). Such a demonstration “cannot be made if the petitioner, acting with reasonable diligence, could have filed on time notwithstanding the extraordinary circumstances.” Valverde, 224 F.3d at 134, citing Fisher v. Johnson, 174 F.3d 710, 716 (5th Cir. 1999) (holding that “equity does not require tolling absent a showing that [the petitioner] diligently pursued his application [in] the remainder of the time [between the extraordinary circumstance and the filing deadline] and still could not complete it on time.”). Thus, “[i]f the person seeking equitable tolling has not exercised reasonable diligence in attempting to file after the extraordinary circumstances began, the link of causation between the extraordinary circumstances and the failure to file is broken, and the extraordinary circumstances therefore did not prevent timely filing.” Id.

Here, Maraj has failed to show that he exercised reasonable diligence in attempting to file a federal habeas petition after he learned of the Superior Court’s February 24th judgment but before the limitation period expired. In fact, Maraj has failed to allege that he even attempted to file his federal habeas claim during the remainder of the limitation period. Although Maraj allegedly did not receive a copy of the Superior Court’s February 24th judgment until June 7,

2000--seventy four days after the judgment became final--Maraj still had until March 24, 2001--an additional 290 days--to file his habeas petition with a federal court. Rather than pursuing collateral review during this time, Maraj waited 275 days and eventually filed a second PCRA application on March 9, 2001. When that judgment became final on September 17, 2003, Maraj still had until October 2, 2003--an additional fifteen days--to file his habeas petition with a federal court. However, Maraj did not attempt to bring his federal habeas claim during either of those time periods. Thus, the delayed receipt of the Superior Court's February 24th judgment did not *prevent* Maraj from filing his federal habeas petition in a timely manner. Maraj's claim does not merit equitable tolling.

Maraj also argues that his counsel exercised reasonable diligence by: (1) making three inquiries into the status of Maraj's appeal before the Superior Court's February 24th judgment; (2) filing a nunc pro tunc application for reargument within 14 days after learning of the Superior Court's February 24th judgment;³ (3) filing an application for allowance of appeal with the Pennsylvania Supreme Court within 30 days of the Superior Court's denial;⁴ (4) filing a missing mail report with the United States Postal Office; and (5) "contact[ing] the Supervising Clerk of the Superior Court to keep the court abreast of any further developments in the investigation." Counsel's attempts to determine the status of and preserve Maraj's first PCRA claim, and to determine the reason why he never received the Superior Court's February 24th judgment may constitute reasonable diligence in pursuing Maraj's first PCRA claim, but do not impact Maraj's

³This nunc pro tunc application was filed on June 22, 2000 and denied as untimely on June 28, 2000.

⁴This application for allowance of appeal was filed on July 26, 2000 and denied as untimely on September 26, 2000.

federal habeas petition. As discussed above, Maraj and his counsel did not attempt to bring Maraj's federal habeas claims until after the limitation period had expired. Therefore, Maraj's petition will be dismissed as untimely.⁵

An appropriate order follows.

⁵In light of his arguments, Maraj also objects to a footnote in Magistrate Judge Scuderi's Order of October 27, 2004, in which he denied Maraj's "Motion for Leave to File Amended Petition" and stated that: "dismissing the instant petition without prejudice would simply delay the inevitable dismissal of the petition on timeliness grounds." This objection will be denied as moot.

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ORDER

AND NOW, this 4th day of January 2005, upon careful and independent consideration of the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, after review of Magistrate Judge Scuderi's Report and Recommendation, and petitioner's objection thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED as follows:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, is DISMISSED.
3. There is NO BASIS for the issuance of a certificate of appealability.

s/ Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.