

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

MAURICE GARRETT :
 :
 v. : CIVIL ACTION
 :
 :
 SUPERINTENDENT TENNIS, et al. : NO. 04-03871

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

March 24 , 2005

Maurice Garrett, Petitioner, who is incarcerated at the Rockview State Correctional Institution at Bellefonte, Pennsylvania, asks this court to grant him habeas corpus relief under 28 U.S.C. § 2254. After a careful and independent review pursuant to 28 U.S.C. § 636, we find the issues Garrett raises present no ground for relief. We overrule Garrett's objection and approve Magistrate Judge Charles B. Smith's Report and Recommendation to dismiss the petition as untimely.

Garrett was convicted on June 4, 1998, of one count of Delivery of a Controlled Substance¹ and sentenced to 10 to 20 years incarceration. On direct appeal Garrett raised many of the same substantive complaints which he raises in his petition for habeas corpus: a police officer's testimony which allegedly suggested prior bad acts, the failure of trial counsel to object to the prosecutor's opening and closing statements and the failure of PCRA counsel to preserve the issues. Garrett also

¹35 P.S. § 780-113(a)(30).

raises a complaint about his sentence, which was based on a Pennsylvania statute imposing a maximum of 20 years incarceration for a second or subsequent controlled substance conviction. 35 P.S. § 780-115.

The Pennsylvania Superior Court affirmed the judgment of sentence on November 17, 1999 and the state Supreme Court denied allocatur on April 11, 2000. On March 5, 2001, Garrett filed a petition pursuant to the Post Conviction Collateral Relief Act (PCRA), 42 Pa.C.S. § 9541 *et seq.* The PCRA court dismissed the petition on December 10, 2001 and Superior Court affirmed June 17, 2003. Garrett filed the instant petition August 16, 2004.

DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996² (AEDPA) establishes a one-year statute of limitations period for state prisoners seeking federal habeas relief under 28 U.S.C. § 2254. 28 U.S.C. § 2244(d)(1). A petitioner must file a federal habeas petition within one year from the date state conviction becomes final. 28 U.S.C. § 2244(d)(1)(A).³

The AEDPA's one-year limitations period for filing a federal habeas petition is subject to both statutory and equitable tolling. 28 U.S.C. §2244(d)(enumerating statutory tolling provisions); *Merritt v. Blaine*, 326 F.3d 157, 161 (3d. Cir. 2003) (holding AEDPA's time limit is subject to the doctrine of equitable tolling, a judicially crafted exception). In fact, the AEDPA expressly prescribes

² Codified in 28 U.S.C. §§ 2241-2255.

³ Section 2244(d)(1) provides: A 1-year period of limitations shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitations 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 for 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; (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

statutory tolling of its one-year limitations period for the “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.” 28 U.S.C. § 2244(d)(2).

Equitable tolling is available “only when the principle of equity would make the rigid application of a limitation period unfair.” *Miller v. New Jersey Dept. of Corr.*, 145 F.3d 616, 618 (3d. Cir. 1998). Furthermore, the Third Circuit has cautioned courts to apply the doctrine of equitable tolling sparingly, in particular “only in the rare situation where [it] is demanded by sound legal principles as well as the interests of justice.” *United States v. Midgley*, 142 F.3d 174, 179 (3d. Cir. 1998)(citing *Alvarez-Machain v. United States*, 96 F.3d 1246, 1251 (9th. Cir. 1996)).

To warrant equitable tolling, the petitioner must prove he has in “some extraordinary way been prevented from asserting his . . . rights” and he “exercised reasonable diligence in investigating and bringing [the] claims.” *Fahy v. Horn*, 240 F.3d 239, 244 (3d Cir. 2001). In non-capital cases, the Third Circuit held “attorney error, miscalculation, inadequate research, or other mistakes have not been found to rise to the ‘extraordinary’ circumstances required for equitable tolling.” *Id.*

Garrett raises two objections to the Report and Recommendation: first that it adopts the Commonwealth’s answer to his petition verbatim and, second, that it misapplies the one-year statutory period. Neither objection is meritorious.

The only evidence Garrett provides to suggest the Magistrate Judge adopted the Response of the District Attorney is a coincidence of a single incorrect date. The District Attorney’s Response incorrectly cited January 13, 2005 as the date on which Garrett filed his petition for habeas corpus. The Report and Recommendation repeats the erroneous date. Garrett filed his petition on August 16, 2004.

The Report and Recommendation, while it appears to have relied on the District Attorney's date, provides a full opinion explaining its independent reasoning for dismissing Garrett's petition and as such is an "autonomous judicial expression of the reasons for dismissal." *Commonwealth v. Williams*, 732 A.2d 1167, 1176 (Pa. 1999); *see also Bright v. Westmoreland County*, 380 F.3d 729, 732 (3d Cir. 2004) (stating "[j]udicial opinions are the core work-product of judges. [T]hey constitute the logical and analytical explanations of why a judge arrived at a specific decision. They are tangible proof to the litigants that the judge actively wrestled with their claims and arguments and made a scholarly decision based on his or her own reason and logic.")

Garrett's second objection, claiming his petition was timely, is also without merit. Garrett's conviction was final July 9, 2000 (the date the state Supreme Court denied allocatur plus 90 days in which he could have sought a writ of certiorari to the U.S. Supreme Court). Two-hundred and thirty eight days of the 365 days allowed under AEDPA expired before Garrett filed his PCRA petition on March 5, 2001, tolling the statute. 28 U.S.C. § 2244(d)(2).⁴ The statute remained tolled until July 16, 2003, 30 days after June 17, 2003 when the state Superior Court denied Garrett's appeal from the dismissal of his PCRA petition.⁵ At that point Garrett had 127 days (a year minus the 238 days which ran before Garrett filed his PCRA petition) in which to file a timely petition for habeas corpus. Garrett's 127 days expired on December 20, 2003.

Garrett's statutory tolling expired eight months before he filed his petition on August 16,

⁴28 U.S.C. § 2244(d)(2) The 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.

⁵ For the purposes of pendency, a petitioner receives the tolling benefit of the 30 days in which he could have filed a timely petition for review to the state Supreme Court whether or not review is actually sought, *Swartz v. Meyers*, 204 F.3d 417, 424-25 (3d Cir. 2000), but does not receive the benefit of the 90 days to seek a writ of certiorari unless a petition is actually filed. *Carey v. Saffold*, 536 U.S. 214, 122 S.Ct. 2134, 153 L.Ed.2d 260 (2002).

