

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

COLWIN WILLIAMS,	:	
	:	
Petitioner	:	
	:	
	:	
v.	:	No. 04-3346
	:	
	:	
DAVID DIGUGLIELMO, <u>et al</u> ,	:	
	:	
Respondents.	:	

**MEMORANDUM**

**GREEN, S.J.**

**June 13, 2005**

Presently pending is the Report and Recommendation (the "Report") of United States Magistrate Thomas J. Reuter and Petitioner's Objections thereto. Petitioner objects to the Magistrate's conclusion that his petition for writ of habeas corpus was untimely when filed and must be dismissed. Petitioner objects to the Report and asserts that his petition should not be dismissed as untimely because due to the complex procedural history of his case, and time periods during which he - at times - was without representation, he should not be held to the statute of limitations period. Petitioner's has enumerated fifteen Objections to the Report. His Objections essentially fall into two categories, the first being that Petitioner wishes to have the PCRA petition he filed in the year 2000 be considered as the first collateral attack on his conviction. The second category of objections involve Petitioner's arguments that the statute of limitations should be tolled. Moreover, Petitioner asserts that at various times he either was without counsel and attempted to proceed with the collateral attacks of his convictions pro se, and also that at times when he was represented by counsel, his attorneys did not file the appeals and petitions for collateral or habeas relief as instructed by Petitioner. He therefore concludes that due to his lengthy proceedings and many changes in his representation the statute of limitations should be tolled and his petition for habeas relief considered on its merits. Petitioner seems to argue that because the trial court's dismissal of his first PCRA petition was reversed because Petitioner was denied the right to counsel, the violation of due process found during those proceedings should not affect the instant petition.

Petitioner was convicted of robbery, conspiracy and theft by unlawful taking on November 19, 1993. His direct appeal of the conviction was affirmed by the Superior Court of Pennsylvania on August 22, 2995 and on April 18, 1996, the Pennsylvania Supreme Court denied his

request for allowance of appeal. On November 18, 1996, petitioner filed a pro se petition collaterally attacking his conviction pursuant to the Pennsylvania Post Conviction Relief Act ("PCRA", 42 Pa.Cons.Stat. Ann. §§ 9541-46. The trial court denied the petition without appointing counsel. On January 18, 2000 Petitioner filed a second PCRA petition which was denied as time barred. However, the Superior Court of Pennsylvania reversed the dismissal of this second petition and found that Petitioner was denied the right to counsel. The second counseled petition was treated as a first petition nunc pro tunc. Commonwealth v. Williams, No 1504 EDA, slip op. At 5-6 (Pa.Super.Ct. Apr. 3, 2001). After a hearing, the second petition was denied. Petitioner appealed the denial to the Superior Court of Pennsylvania which affirmed the denial on July 15, 2003. There is no evidence of record to demonstrate that Petitioner filed a request for allowance of appeal to the Supreme Court of Pennsylvania. Petitioner filed the instant petition for habeas corpus relief on July 16, 2004.

The AEDPA, became effective on April 26, 1996. It provides applicants with a one-year period of limitation from its effective date, or the date on which the judgment of conviction became final by the conclusion of direct review or the expiration of time to seek such review, within which to file a petition for writ of habeas corpus. Consequently, applicants convicted prior to April 26, 1996 had until April 26, 1997 to timely file a petition for writ of habeas corpus. See, Miller v. New Jersey State Dep't of Corrections, 145 F.3d 615, 617-18 (3d Cir. 1998). The statute also provides that a properly filed application for state post-conviction relief shall be counted toward any period of limitation under the statute, thereby effectively tolling the statute during the pendency of any PCRA claims. Petitioner was convicted in 1993, however direct review of his conviction did not conclude until July 18, 1996 - the expiration date for seeking review in the United States Supreme Court. Therefore, AEDPA's one year statute of limitations began to run on July 18, 1996. The one year limitations period must be tolled for the times during which he filed his PCRA petitions and while they were pending.

Petitioner filed his first PCRA petition on November 18, 1996. One hundred and twenty-three days of the 365 day limitations period had passed at the time of this filing, leaving 242 days remaining within which to timely file a habeas petition in this court. As the Magistrate

Judge properly noted Petitioner's second PCRA petition was treated as being filed nunc pro tunc to the date of the filing of the first petition. In other words Petitioner's second PCRA petition was considered as though it had been filed on the date of his first PCRA petition.<sup>1</sup> Those proceedings terminated on July 15, 2003 and the limitations period began to run again on August 15, 2003 upon the expiration of the time for the allowance of an appeal. As of August 15, 2003 Petitioner had 242 remaining days within which to timely file a habeas petition, or before April 14, 2004. Petitioner did not file the instant petition until July 13, 2004, well after the limitations period had expired.

Although Petitioner objects to the Magistrates conclusion regarding the timeliness of his petition, none of his Objections provide a basis for this court to equitably toll the statute of limitations. Despite his Objections to the contrary, Petitioner has not provided the court with any exceptional or unusual circumstances that warrant the application of equitable tolling. The statute of limitations for habeas corpus petitions is subject to equitable tolling only in extraordinary circumstances. See, Miller v. New Jersey Stat Dep't of Corrections, 145 F.3d 616, 618 (3d Cir. 1998). Petitioner argues that the Commonwealth of Pennsylvania should have notified him of his deadline for filing a habeas petition and that by failing to do so he was prejudiced. He also argues that he raised this issue with his counsel and asserts that by raising the "right" with counsel, he timely asserted his rights, but in the wrong forum. See Pet. Obj., no. 11, 12. The Commonwealth of Pennsylvania has no duty to advise Petitioner of the procedural filing requirements for raising federal claims. Furthermore, discussing this issue with counsel can in no way be considered "raising rights in the wrong forum." Petitioner's Objections on these grounds will also be overruled. Again, Petitioner does not raise any exceptional or unusual circumstances that would authorize this court to equitably toll the statute of limitations.

Therefore the Report will be approved and adopted.

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<sup>1</sup>Petitioner's Objection on the ground that his second PCRA petition should be treated as his first PCRA petition will be overruled since his second petition was treated as though it had been filed nunc pro tunc.

An appropriate order follows.

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	:	
Respondents.	:	

**ORDER**

**AND NOW**, this            day of June 2005, **IT IS HEREBY ORDERED** that  
Petitioner's Objections are **OVERRULED** and the Report and Recommendation of Magistrate Judge  
Thomas J. Rueter is **APPROVED** and **ADOPTED**. There is no cause to issue a certificate of  
appealability.

BY THE COURT:

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Clifford Scott Green, S.J.