

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

RONALD WHEELER, :
PETITIONER : CIVIL ACTION
 :
v. :
 :
JAMES MORGAN, :
RESPONDENT : No. 96-7820

M E M O R A N D U M

Padova, J.

September 16, 1997

Ronald Wheeler, an inmate at the State Correctional Institution at Smithfield, Pennsylvania, filed a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.A. § 2254 (West 1994 & Supp. 1997). In accordance with 28 U.S.C.A. § 636(b)(1)(B) (West 1993 & Supp. 1997), this Court referred Mr. Wheeler's Petition to a United States Magistrate Judge for a Report and Recommendation. The Magistrate Judge recommended that the Court dismiss Mr. Wheeler's Petition pursuant to the "Antiterrorism and Effective Death Penalty Act of 1996," Pub. L. No. 104-132, 110 Stat. 1214 (April 24, 1996). Mr. Wheeler filed Objections. For the following reasons, the Court will sustain Mr. Wheeler's Objections and remand the case to the Magistrate Judge for review of the Petition on its merits.

I. Factual and Procedural History

On April 28, 1983, a jury in the Court of Common Pleas of Bucks County found Defendant, Ronald Wheeler, guilty of first degree murder and the death penalty was imposed. On appeal, the Supreme Court of Pennsylvania affirmed Mr. Wheeler's conviction but vacated the death sentence and remanded for the imposition of a life sentence. Commonwealth v. Wheeler, 541 A.2d 730 (1988). Mr. Wheeler collaterally attacked his sentence under Pennsylvania's Post Conviction Relief Act, 42 Pa. Cons. Stat. Ann. §§ 9541-9551 (West 1982 & Supp. 1997) ("PCRA"). On August 10, 1988, Mr. Wheeler's PCRA petition was denied because a direct appeal was pending before the Pennsylvania Superior Court. An amended petition was filed on May 12, 1989, which also was denied because an appeal was believed to have been pending on the dismissal of the initial PCRA petition.

On March 7, 1990, the Superior Court of Pennsylvania reversed and remanded the PCRA court's order dismissing the petition and instructed the PCRA court to decide the petition on its merits. The petition was again denied on January 15, 1993. On September 2, 1993, the Superior Court reversed and remanded the PCRA court and ordered an evidentiary hearing on the alleged ineffectiveness of appellate counsel. After conducting an evidentiary hearing on this issue, the PCRA court denied Mr. Wheeler's petition. The Superior Court affirmed the decision to

deny PCRA relief. Mr. Wheeler's request for reconsideration was denied on December 8, 1994. On June 7, 1995, the Supreme Court of Pennsylvania denied Mr. Wheeler's petition for allowance of appeal.

The instant petition for Writ of Habeas Corpus was filed on September 10, 1996.¹ Mr. Wheeler's Petition asserts three grounds for relief: (1) ineffective assistance of trial counsel; (2) ineffective assistance of appellate counsel; and (3) prosecutorial misconduct. By Order dated January 15, 1997, the Court referred Mr. Wheeler's Petition to the Magistrate Judge for a Report and Recommendation ("the Report"). The Report was filed on May 2, 1997. The Report recommended that the Court dismiss Mr. Wheeler's Petition pursuant to the "Antiterrorism and Effective Death Penalty Act of 1996," Pub. L. No. 104-132, 110 Stat. 1214 (April 24, 1996). When Petitioner failed to file objections within ten days after being served with a copy of the recommended disposition, this Court, by Order dated May 23, 1997, adopted the Report and dismissed Mr. Wheeler's Petition for Writ of Habeas Corpus. Fed. R. Civ. P. 72(b).

On May 30, petitioner moved for relief from the Court's May 23, 1997 Order. The Court subsequently vacated the Order and

¹ The petition was originally filed in the United States District Court for the Middle District of Pennsylvania and transferred to this court by Order dated November 20, 1996.

gave petitioner until June 23, 1997 to file objections.

Petitioner filed his objections to the Report on June 23, 1997.

II. Standard of Review

"[I]n conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." Kontakis v. Beyer, 19 F.3d 110, 114 (3d. Cir. 1994) (citation omitted). Where a habeas petition has been referred to a magistrate judge for a Report and Recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. . . . [The Court] may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.A. § 636(b).

III. Discussion

A. The New Limitations Period

On April 24, 1996, the "Antiterrorism and Effective Death Penalty Act of 1996," ("AEDPA") Pub. L. No. 104-132, was signed into law. The AEDPA amends 28 U.S.C. § 2244(d) to impose a one-year statute of limitations on habeas corpus petitions brought under 28 U.S.C. § 2254. Specifically, § 2244(d) provides:

(d)(1) A 1-year period of limitation shall apply to an application for 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;

(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.

(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.

28 U.S.C. § 2244(d).

The Supreme Court recently held that chapter 153 of the AEDPA, which applies to noncapital habeas corpus actions, should not be applied to petitions that were already pending when the AEDPA was passed. Lindh v. Murphy, 117 S.Ct. 2059, 2061 (1997).² Moreover, the Supreme Court stated that § 2254(d) was "assumed

² This recent Supreme Court decision, which adds compelling logic for the result reached herein, was decided after the Magistrate filed the Report and Recommendation.

and meant to apply to the general run of habeas cases only when those cases had been filed after the date of the Act." Id. at 2063. Therefore, pursuant to Lindh, the one-year time limitation presumptively would apply to the instant petition, which was filed after the date of the Act.

B. The AEDPA's Limitations Period in the Instant Case

The Supreme Court of Pennsylvania denied Mr. Wheeler's petition for allowance of appeal on June 7, 1995. Therefore, if AEDPA's limitations period was deemed to have started at the time of that denial, (before the April 24, 1996 date of the AEDPA's enactment), Mr. Wheeler had until June 8, 1996 to file his petition.³

To require Mr. Wheeler to have filed his petition by this date, however, would "attach new legal consequences to events completed before [the AEDPA's] enactment." Landgraf v. USI Film Prods., 511 U.S. 244, 270 (1994). At the time Mr. Wheeler's conviction became final, no statute of limitations had ever been imposed on the filing of a petition for writ of habeas corpus.

³ For purposes of this memorandum, and pursuant to § 2244(d)(1)(A), the Court will use June 7, 1995, the date petitioner's conviction became final in state court, as the date the limitations period began to run. The Court will not adopt petitioner's "state imposed impediment" argument that the limitations period began on October 16, 1995, the date the Supreme Court of Pennsylvania denied his petition for writ of mandamus. (Pet. Obj. at ¶¶ 1, 4).

See United States v. Smith, 331 U.S. 469, 475 (1947) ("habeas corpus provides a remedy for jurisdictional and constitutional errors at the trial without limit of time"). A petitioner had "almost unfettered discretion in deciding when to file a habeas petition." Calderon v. United States District Court for the Central District of California, 112 F.3d 386, 388 (9th Cir. 1997) (footnote omitted).

In order to avoid unfair and retroactive application of the limitations period to prisoners whose convictions became final before the AEDPA's enactment, the Second, Seventh, Ninth and Tenth Circuits have afforded these prisoners a "reasonable time" to file a habeas petition. See Reyes v. Keane, 90 F.3d 676, 679 (2d Cir. 1996) (determining it "entirely unfair and a severe instance of retroactivity" to apply AEDPA's limitations period when it ended before the date of the Act), overruled on other grounds by Nelson v. Walker, No. 96-2354, 1997 WL 442686 (2d Cir. Aug. 7, 1997); Lindh v. Murphy, 96 F.3d 856, 866 (7th Cir. 1996) (en banc) (stating that "[c]ourts treat a reduction in the statute of limitations as a rule for new cases only"), rev'd on other grounds by Lindh v. Murphy, 117 S.Ct. 2059 (1997); Calderon v. United States District Court for the Central District of California, 112 F.3d at 389 (concluding that AEDPA's limitations period did not begin to run against any state prisoner prior to the statute's enactment); United States v. Simmonds, 111 F.3d

737, 745-46 (10th Cir. 1997) (holding that "prisoners whose convictions became final on or before April 24, 1996 must file their [parallel] § 2255 motions before April 24, 1997").

Otherwise,

Those state prisoners whose year had elapsed prior to AEDPA's enactment would be altogether barred from filing petitions that would have been timely under the old regime. Those prisoners who had some days remaining before their year elapsed would face dire consequences for having wasted the time prior to AEDPA's enactment: They would have to investigate, prepare and file a petition in however much time remained--perhaps as little as one day.

Calderon v. United States District Court for the Central District of California, 112 F.3d at 389.

The Court agrees that to cut off access to federal courts by prisoners who lacked sufficient notice of the AEDPA's limitations period would be manifestly unfair. Therefore, I concur with the above-listed circuits and find that AEDPA's one-year time limit did not begin to run against any state prisoner prior to April 24, 1996, the date of the statute's enactment, and such prisoners must be afforded a reasonable time to file a habeas petition.

The Court must next determine what constitutes a "reasonable time" for a state prisoner to file a petition after the AEDPA's enactment. Many courts have held that one year is such a "reasonable time." See Lindh v. Murphy, 96 F.3d at 866 (stating "section 2244(d) is short enough that the 'reasonable time' after April 24, 1996, and the one-year period coalesce"); see also

Duarte v. Hershberger, 947 F.Supp. 146, 149 (D.N.J. 1996)

(holding that petitioner is entitled to a one-year grace period).

I agree.

By amending 28 U.S.C. § 2244(d) with a one-year period of limitations, Congress decided that one year is an appropriate and adequate period of time for a prisoner to research and file a petition for writ of habeas corpus. This Court can conceive of no reason why a prisoner whose conviction became final the day after the enactment of AEDPA should have one year to file his petition, and a prisoner whose conviction became final within the year preceding the AEDPA's enactment, should have only the time remaining in that one year. Such an approach would lead to inequitable application of the statute, contrary to Congress' general intent. Therefore, the Court concludes that a petition for writ of habeas corpus filed by a state prisoner before April 24, 1997, may not be dismissed for failure to comply with AEDPA's time limit.

Mr. Wheeler's conviction became final on June 7, 1995, over ten months before enactment of the AEDPA. He filed his petition on September 10, 1996, well within the one-year grace period. I therefore hold that the instant motion was timely and remand the case to the Magistrate Judge for consideration of the Petition on its merits.

An appropriate Order follows.

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JAMES MORGAN, RESPONDENT	:	
	:	No. 96-7820

O R D E R

AND NOW, this 16th day of September, 1997, upon careful and independent consideration of the petition for Writ of Habeas Corpus, and after review of the Magistrate Judge's Report and Recommendation and Petitioner's Objections thereto, **IT IS HEREBY ORDERED** that:

1. Petitioner's Objections are **SUSTAINED**.
2. The petition for writ of habeas corpus is **REMANDED** to the Magistrate Judge for further consideration consistent with the accompanying Memorandum.

BY THE COURT:

John R. Padova, J.

