

Appeals of Virginia on October 3, 2002. The Court of Appeals denied the appeal on December 29, 2003. Scarce did not appeal to the Supreme Court of Virginia. On September 7, 2004, Scarce filed a petition for a writ of habeas corpus in the Supreme Court of Virginia. The Supreme Court denied this petition on April 6, 2005. Scarce signed the instant petition on April 29, 2005.

Scarce argues that the court continued Scarce's sentencing for four [sic] years between August 25, 1999 and September 4, 2002. Scarce claims that as a result, his conviction did not become final until after the Court of Appeals denied Scarce's appeal in December 2003. However, Scarce's argument is without merit. The August 25, 1999 sentencing order makes clear that Scarce has been sentenced and convicted and has the right to file an appeal. The September 4, 2002 proceeding was held pursuant to a post-conviction motion for resentencing and does not restart the limitation period under 28 U.S.C. § 2244(d)(1).

Scarce's own arguments indicate that he knows that his conviction became final after sentencing in August 1999. Scarce claims that defense counsel was ineffective for failing to appeal Scarce's conviction. The September 2002 resentencing was appealed, it was the original sentencing that was not appealed. If sentencing was merely continued for three years, then counsel could not have been ineffective for failing to note an appeal to the original sentence because it was not yet final.

It is clear from the information presented in the petition that Scarce's conviction became final on September 25, 1999, thirty days after the court sentenced Scarce. See Va. Sup. Ct. R. 5:9(a). The one-year limitation period expired September 24, 2000. See 28 U.S.C. § 2244(d)(1). Because Scarce did not file his federal habeas petition in this court until four-and-a-half years

after the limitation period expired, the court must dismiss Scarce's petition as untimely, pursuant to 28 U.S.C. § 2244(d)(1). An appropriate order will be entered this day.

ENTER: This 11th day of May, 2005

A. S. Casper

UNITED STATES DISTRICT JUDGE