

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-10729  
Non-Argument Calendar

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D.C. Docket No. 8:16-cv-03483-WFJ-AEP

JERRY L. PARKER,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,  
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Middle District of Florida

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(April 2, 2021)

Before MARTIN, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Jerry L. Parker appeals the district court's dismissal of his 28 U.S.C. § 2254 petition as untimely. Specifically, Parker challenges the district court's conclusion that his amended state postconviction motion under Florida's Rule of Criminal Procedure 3.850 had no tolling effect because the one-year limitation period had already expired. Parker says his amended Rule 3.850 motion related back to his original Rule 3.850 motion, which was filed before the limitation period expired. The State has declined to defend the district court's decision and has conceded that this matter should be remanded. We therefore vacate and remand so the district court can consider the merits of Parker's claims.

**I.**

In 2011, Parker was convicted of several Florida state law offenses. His judgment of conviction became final on April 18, 2013. Relevant here, on December 31, 2013, Parker filed a motion for postconviction relief under Rule 3.850. The state court struck the motion without prejudice because it was improperly filed, but granted him an extension until October 6, 2014 to file a corrected Rule 3.850 motion. Parker filed his corrected motion on September 29, 2014. The state court ultimately denied his motion, and the mandate issued on December 7, 2016.

On December 19, 2016, Parker filed the present § 2254 petition. The district court dismissed his petition as time-barred, finding that the limitation period had

expired on June 18, 2014. The court also found that neither of Parker's state postconviction motions tolled the limitations period. It explained that Parker's December 31, 2013 Rule 3.850 motion did not toll the limitation period because it was not properly filed. And even though Parker subsequently filed a corrected Rule 3.850 motion on September 29, 2014, the court said that motion had no tolling effect either because the one-year limitation period had already expired.

Our Court granted a Certificate of Appealability on the following issue:

Whether the district court erred in dismissing Parker's 28 U.S.C. § 2254 petition as time-barred in light of Bates v. Sec'y, Dep't of Corr., 964 F.3d 1326, 1328 (11th Cir. 2020), Hall v. Sec'y, Dep't of Corr., 921 F.3d 983, 987 (11th Cir. 2019), and Green v. Sec'y, Dep't of Corr., 877 F.3d 1244, 1249 (11th Cir. 2017).

## II.

We review de novo the dismissal of a petition for a writ of habeas corpus as untimely. Bates v. Sec'y, Dep't of Corr., 964 F.3d 1326, 1328 (11th Cir. 2020). Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), § 2254 petitions are subject to a one-year statute of limitations. 28 U.S.C. § 2244(d)(1)(A). However, that one-year limitation period is statutorily tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment of claim is pending." Id. § 2244(d)(2).

The State has waived any argument that would distinguish our existing precedents from this case. We have said that a Florida prisoner’s amended Rule 3.850 motion, filed after his initial motion was denied with leave to amend, related back to the original filing date, therefore tolling the period from the original filing date until the conclusion of his Rule 3.850 proceedings. Green v. Sec’y, Dep’t of Corr., 877 F.3d 1244, 1248 (11th Cir. 2017). This Court has also held that a habeas petitioner’s corrected Rule 3.850 motion related back to the initial, improperly sworn Rule 3.850 motion where the petitioner “filed a properly sworn Rule 3.850 motion within the state court’s prescribed time period.” Hall v. Sec’y, Dep’t of Corr., 921 F.3d 983, 988 (11th Cir. 2019). And we later clarified that, “under Green and Hall, a compliant Rule 3.850 motion relates back to the date of filing of a noncompliant motion, such that the compliant motion was ‘properly filed’ and ‘pending’ as of that date for purposes of tolling the limitations period.” Bates, 964 F.3d at 1328. Indeed, we recently held that a § 2254 petition was timely for the very same reason: the petitioner’s amended Florida postconviction motion related back to his initial postconviction motion. Morris v. Sec’y, Fla. Dep’t of Corr., -- F.3d --, No. 18-14802, (11th Cir. Mar. 25, 2021), slip op. at 6–8, 11. In Morris, as here, the amended state postconviction motion was timely filed. See id. at 7. Therefore, because Parker filed his September 29, 2014 corrected

Rule 3.850 motion within the time the state court prescribed for doing so, it related back to his original December 31, 2013 motion.

Parker's § 2254 petition was timely filed. The limitation period ran for 257 days from the time his conviction became final on April 18, 2013 to December 31, 2013 when Parker filed his original Rule 3.850 motion. The limitation period then remained tolled throughout the conclusion of Parker's Rule 3.850 proceedings, until the mandate issued on December 7, 2016. See Green, 877 F.3d at 1247. Thereafter, an additional 12 days of untolled time ran before Parker filed the present § 2254 petition on December 19, 2016. Thus, a total of 269 untolled days passed between the date of Parker's convictions and sentences becoming final and the date he filed his federal habeas petition. His § 2254 petition was therefore timely. 28 U.S.C. § 2244(d).

**VACATED AND REMANDED.**