

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**CONRAY CARROLL  
ADC #110901**

**PETITIONER**

**v.**

**CASE NO.: 5:08CV00192-WRW-BD**

**LARRY NORRIS, Director,  
Arkansas Department of Correction**

**RESPONDENT**

**RECOMMENDED DISPOSITION**

**I. Procedure for Filing Objections:**

\_\_\_\_\_The following recommended disposition has been sent to United States District Judge William R. Wilson, Jr. Any party may file written objections to this recommendation. Objections should be specific and should the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date you receive the Recommended Disposition. A copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite A149  
Little Rock, AR 72201-3325

Pending is Respondent's motion to dismiss the petition (docket entry # 16). Petitioner opposes the motion to dismiss and has filed a motion for judgment on the pleadings (#22) and a motion to strike Respondent's response to the motion for judgment on the pleadings (#25). For the reasons that follow, the Court recommends that the District Court grant the motion to dismiss and deny Petitioner's motion for judgment on the pleadings and motion to strike as moot.

**II. Background:**

\_\_\_\_\_ On April 10, 1997, Petitioner Conray Carroll entered a plea of guilty in Pulaski County Circuit Court to the offense of rape. (#17 at p. 2) In a judgment and commitment order filed May 30, 1997, the Circuit Court sentenced Petitioner to sixty years in the Arkansas Department of Correction ("ADC"). (#2 at p. 1)

On June 26, 2002, Petitioner filed a motion to reopen the case (#17-3 at p. 2) and for forensic testing. (#17-3 at p. 2) On November 26, 2002, the Circuit Court denied Petitioner's motions. On May 12, 2006, Petitioner filed a petition for writ of habeas corpus with the Circuit Court of Lincoln County which was denied on August 1, 2007. (#17-3 at p. 3) On July 8, 2008, Petitioner's request to transfer his case to United States District Court was denied by the Pulaski County Circuit Court. (#2 at p. 11)

On July 16, 2008, Petitioner filed this petition for writ of habeas corpus under 28 U.S.C. § 2254. (#2) Petitioner raises the following claims in his petition: (1) that he was convicted with evidence obtained through an unlawful arrest; (2) that his conviction was

unconstitutional because the prosecution failed to disclose evidence which was favorable to him; (3) that he was prejudiced by ineffective assistance of trial counsel; and (4) that he was denied a fair and impartial trial. (#2 at pp. 5-6)

\_\_\_\_\_ In his motion to dismiss (#16), Respondent asserts that Petitioner's claims are barred by the applicable statute of limitations, and that neither statutory nor equitable tolling are permitted.

### **III. The Statute of Limitations**

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254(d)(1), establishes a one-year statute of limitations during which a state prisoner must commence a habeas corpus proceeding under 28 U.S.C. § 2254. The statute provides that the limitation period shall run from, "(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time limit for seeking such review."

In this case, Petitioner entered a plea of guilty to one count rape on April 10, 1997. (#17 at p. 2) The judgment and commitment order sentencing Petitioner to 60 years in the Arkansas ADC was filed on May 30, 1997. *Id.* at 2. Under Arkansas Rule of Criminal Procedure 1(a), direct review from a plea of guilty or nolo contendere is barred unless a conditional plea has been allowed by Arkansas Rule of Criminal Procedure 24.3(b). Petitioner did not enter a conditional plea, so he was not entitled to any direct review of

his sentence. Calculating the date from May 30, 1997, the statute of limitations for Petitioner to file a federal habeas corpus petition expired on May 30, 1998.

    **A.    Statutory Tolling**

Title 28 U.S.C. § 2244(d)(2), provides that “[t]he 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 section.” However, a petition for Rule 37 post-conviction relief that is not filed in a timely manner is not a “properly filed application for state post-conviction or other collateral review,” and 28 U.S.C. § 2244(d)(2)’s tolling provision does not apply in that circumstance. *Pace v. DiGuglielmo*, 544 U.S. 408, 410-417 (2005); *Walker v. Norris*, 436 F.3d 1026, 1030 (8th Cir. 2006).

Under Arkansas Rule of Criminal Procedure 37.2(c), a petitioner may claim post-conviction relief within 90 days of the date of entry of judgment or “within ninety (90) days of the date sentence was pronounced.” Petitioner did not file any petition for post-conviction relief until June 26, 2002, when he filed a motion with the trial court under Ark. Code Ann. § 16-112-201. This motion was filed after the ninety (90) days had expired and was denied on November 26, 2002. (#17 at p. 1) Petitioner is not entitled to statutory tolling and his claims are barred by the statute of limitations unless he is entitled to equitable tolling.

## **B. Equitable Tolling**

The statute of limitations set forth in 28 U.S.C. § 2244(d)(1) is subject to equitable tolling. *Jihad v. Hvass*, 267 F.3d 803, 805-06 (8th Cir. 2001). Equitable tolling is proper, however, only when extraordinary circumstances beyond a prisoner's control make it impossible to file a petition on time, or when the conduct of the respondent has lulled the plaintiff into inaction. *Id.* (citing *Kreutzer v. Bowersox*, 231 F.3d 460, 463 (8th Cir. 2000)). Equitable tolling is an "exceedingly narrow window of relief." *Id.* at 805. The Eighth Circuit has held that pro se status, lack of legal knowledge or legal resources, and confusion about or miscalculations of the limitations period are inadequate grounds to warrant equitable tolling. See *Shoemate v. Norris*, 390 F.3d 595, 598 (8th Cir. 2004).

In his response to the motion to dismiss, Petitioner states that he is entitled to equitable tolling because: (1) the prosecution did not bring formal charges against him until June 14, 1997, after Petitioner entered a plea of guilty; (2) the arrest warrant was not signed by a judge under oath; (3) his plea of guilty did not waive his jurisdictional challenge to the conviction because his arrest was a fraud and unconstitutional; (4) the Respondent engaged in professional misconduct by not discussing in his motion to dismiss Petitioner's writ of habeas corpus petitions that were filed with the State which were grounds for equitable tolling; and (5) Respondent failed to discuss prosecutorial misconduct, attach copies of medical and scientific reports, and also failed to explain why

the Prosecutor did not file formal charges in a timely manner in his motion to dismiss.

(#21)

The Court has carefully reviewed and liberally construed the petition, Petitioner's response to the motion to dismiss, Petitioner's motion for a judgment on the pleadings and motion to strike. The Court cannot find anything in Petitioner's filings to justify equitable tolling of the limitations period. Petitioner has not alleged extraordinary circumstances that made it impossible for him to file a timely habeas petition. He knew, or should have known through the exercise of due diligence, of all of the filing deadlines and procedures for filing his claims. While it is true that Petitioner did not waive jurisdictional claims by pleading guilty, he knew or should have known about the claims since 1997 and failed to raise the claims with the Court in a timely manner.

Accordingly, Petitioner's claim that he is entitled to direct review of his conviction is barred under Arkansas Rule of Appellate Procedure-Criminal 1(a) because of his guilty plea, and his claims for habeas relief are barred by the one-year limitations period established by 28 U.S.C. § 2254(d).

#### **IV. Conclusion**

The Court recommends that the District Court dismiss Petitioner's petition for writ of habeas corpus (#2) with prejudice and deny Petitioner's motion for judgment on the pleadings and motion to strike (#22 and #25) as moot.

DATED this 7th day of November, 2008.

A handwritten signature in cursive script, appearing to read "Richard J. ..." with a flourish at the end.

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UNITED STATES MAGISTRATE JUDGE