

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DANIEL CARNEIRO

v.

PRISONER
CIVIL NO. 3:10-CV-1510 (AVC)

CAROLE CHAPDELAINE, ET AL.

ORDER

Daniel Carneiro is an inmate currently confined at the Osborn Correctional Institution in Somers, Connecticut. He brings this action pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (2000) challenging his 2001 convictions for sexual assault, risk or injury to a minor, and intimidating a witness.

Federal habeas corpus statutes impose a one-year statute of limitations on federal petitions for a writ of habeas corpus challenging a judgment of conviction imposed by a state court. 28 U.S.C. § 2244(d)(1) (2000). The limitations period begins on the completion of the direct appeal or the conclusion of the time within which an appeal could have been filed. The limitations period may be tolled for the period during which a properly filed state habeas petition is pending. 28 U.S.C. § 2244; Williams v. Artuz, 237 F.3d 147, 151 (2d Cir.), cert. denied, 534 U.S. 924 (2001). The district court has the discretion to raise the timeliness of a federal habeas petition sua sponte. Day v. McDonough, 547 U.S. 198, 209-10 (2006).

On August 31, 2001, in the Connecticut Superior Court for the Judicial District of Waterbury, a jury convicted the petitioner of one count of sexual assault in the first degree, one count of risk of injury to a minor, and one count of intimidating a witness. On October 17, 2001, the court sentenced the petitioner to twenty-five years of imprisonment, execution suspended after twenty-three years and followed by thirty-five years of probation. On April 29, 2003, the Connecticut Appellate Court affirmed the judgment of conviction. See State v. Carneiro, 76 Conn. App. 425, 820 A.2d 1053 (2003). On June 11, 2003, the Connecticut Supreme Court denied a petition for certification to appeal the decision of the Connecticut Appellate Court. See State v. Carneiro, 264 Conn. 909, 826 A.2d 180 (2003). On October 6, 2003, the United States Supreme Court denied the petition for writ of certiorari to appeal the decision of the Connecticut appellate courts. See Carneiro v. Connecticut, 540 U.S. 915 (2003).

In March 2003, the petitioner filed a habeas petition in state court challenging his August 2001 convictions. On November 30, 2006, after an evidentiary hearing, a Superior Court Judge issued a decision denying the petition for writ of habeas corpus. See Carniero v. Warden, No. CV030475012S, 2006 WL 3691794 (Conn. Super. Ct. Nov. 30, 2006). On August 5, 2008, the Connecticut Appellate Court affirmed the decision of the trial court. See Carneiro v. Commissioner of Correction, 109 Conn. App. 513, 952

A.2d 80 (2008). On October 3, 2008, the Connecticut Supreme Court denied certification to appeal the decision of the Connecticut Appellate Court. See Carneiro v. Commissioner of Correction, 289 Conn. 936, 958 A.2d 1244 (2008). The petitioner filed the present petition on August 30, 2010, over ten months after the one-year limitations period expired.

Petitioner is afforded **twenty (20) days** from the date of this ruling to show cause why this petition should not be dismissed as time-barred. Failure to respond to this order will result in the dismissal of this case.

IT IS SO ORDERED.

Dated at Hartford, Connecticut, this 25th day of October, 2010.

/s/ Thomas P. Smith
Thomas P. Smith
United States Magistrate Judge