

11/24/09

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

DONALD LAWRENCE,

PETITIONER

v.

No. 3:08CV127-D-A

JAMES M. HOOD

RESPONDENT

MEMORANDUM OPINION

This matter comes before the court on the *pro se* petition of Donald Lawrence for a writ of *habeas corpus* under 28 U.S.C. § 2254. The state has moved to dismiss the petition as untimely filed. The petitioner has not responded, and the time for response has expired. The matter is ripe for review. For the reasons set forth below, the instant petition for a writ of *habeas corpus* will be **DISMISSED** with prejudice as untimely filed under 28 U.S.C. § 2244(d).

**Facts and Procedural Posture**

On February 17, 1999, the Circuit Court of Marshall County, Mississippi, entered judgment against the petitioner for two counts of sale of a controlled substance within 1,500 feet of a public park. The court sentenced the petitioner the same day to serve twenty years for each count in the custody of the Mississippi Department of Corrections – to be served concurrently – and ordered to pay a \$10,000.00 fine, plus court costs. The court of appeals affirmed the decision of the trial court on January 9, 2001. *Lawrence v. State*, 780 So.2d 652 (Miss. App. 2001), *reh'g denied* Mar. 13, 2001 (Cause No. 1999-KA-00658-COA). Lawrence did not file a petition for *certiorari* with the Mississippi Supreme Court. He filed a motion for post-conviction collateral relief (PCR) with the Mississippi Supreme Court on April 21, 2008, which the court dismissed as untimely filed on May 28, 2008. The petitioner filed the instant federal petition for a writ of *habeas corpus* on November 26, 2008.

## Discussion

The petitioner's conviction became final on March 27, 2001, fourteen days after he was sentenced on his guilty plea (March 13, 2001 + 14 days). MISS. R. APP. P. 17(b); *Acker v. State*, 797 So.2d 966 (Miss. 2001). Therefore, the deadline for the petitioner to submit a properly filed state application for post-conviction relief as contemplated by 28 U.S.C. § 2244(d)(2) – and thus toll the federal one-year statute of limitations – was one year later on March 27, 2002. *Flannagan v. Johnson*, 154 F.3d 196, 201 (5<sup>th</sup> Cir. 1998); *Davis v. Johnson*, 158 F.3d 806 (5<sup>th</sup> Cir. 1998). The petitioner did not meet the deadline as the petition was filed long after that deadline expired; the petitioner thus did not enjoy the benefit of statutory tolling.

Under the “mailbox rule,” the instant *pro se* federal petition for a writ of *habeas corpus* is deemed filed on the date the petitioner delivered it to prison officials for mailing to the district court. *Coleman v. Johnson*, 184 F.3d 398, 401, *reh'g and reh'g en banc denied*, 196 F.3d 1259 (5<sup>th</sup> Cir. 1999), *cert. denied*, 529 U.S. 1057, 120 S. Ct. 1564, 146 L.Ed.2d 467 (2000) (citing *Spotville v. Cain*, 149 F.3d 374, 376-78 (5<sup>th</sup> Cir. 1998)). Lawrence did not sign the petition in this case; as such, the court will allow three days for mailing based upon the date the petition was entered on the docket, which sets the filing date to November 23, 2008. Therefore, the instant petition was filed 2,433 days after the March 27, 2002, filing deadline. The petitioner does not allege any “rare and exceptional” circumstance to warrant equitable tolling. *Ott v. Johnson*, 192 F.3d at 513-14. The instant petition will therefore be dismissed with prejudice and without evidentiary hearing as untimely filed under 28 U.S.C. § 2244(d).

A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 24<sup>th</sup> day of November, 2009.

/s/ Glen H. Davidson  
SENIOR JUDGE