

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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| MARTY ROSS, | : | |
| | : | |
| | : | Civil Action No. 17-3135 (PGS) |
| Petitioner, | : | |
| | : | |
| v. | : | OPINION |
| | : | |
| STEVEN JOHNSON, et al., | : | |
| | : | |
| Respondents. | : | |

SHERIDAN, District Judge:

Petitioner Marty Ross, confined at New Jersey State Prison in Trenton, New Jersey, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging a conviction and sentence imposed by the State of New Jersey for drug, sexual assault, and related crimes. At this time, the Court must screen for summary dismissal pursuant to Rule 4 of the Rules Governing Section 2254 Proceedings for the United States District Courts. For the reasons stated below, the Court dismisses the Petition as time-barred.

I. FACTUAL BACKGROUND

According to the Petition, Petitioner was originally convicted on December 13, 2006. ECF No. 1 at 1. On appeal, the matter was remanded for resentencing, and resentencing occurred on December 23, 2009. *Id.* at 2. The new sentence was ultimately affirmed after the New Jersey Supreme Court denied certification on January 30, 2012. *Id.*

Petitioner asserts that he filed three separate applications for post-conviction relief (“PCR”) in the state court. The first PCR application was filed while his direct appeal was still pending, and Petitioner voluntarily withdrew that application. *Id.* at 3. The second application was filed on


court, whose finding was affirmed by the appellate court. *Ross I*, at *2. Although the state court also reached the merits of the third PCR application, because the state court explicitly found that the third PCR application was untimely, “*that would be the end of the matter*, regardless of whether it also addressed the merits of the claim, or whether its timeliness ruling was ‘entangled’ with the merits.” *Pace*, 544 U.S. at 414 (quoting *Carey v. Stafford*, 536 U.S. 214, 226 (2002)) (emphasis in the original); see *Jenkins*, 705 F.3d at 85. As such, Petitioner’s third PCR application was not “properly filed,” so he is not entitled to statutory tolling for the duration of his third PCR application, rendering the instant Petition untimely under AEDPA. Accordingly, the Court dismisses the Petition as time-barred.

The Court also denies a certificate of appealability (“COA”). AEDPA provides that an appeal may not be taken to the court of appeals from a final order in a § 2254 proceeding unless a judge issues a certificate of appealability on the ground that “the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), the United States Supreme Court held that “[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Here, the Court denies a certificate of appealability pursuant to 28 U.S.C. § 2253(c) because jurists of reason would not find it debatable that dismissal of the Petition is correct.

III. CONCLUSION

For the reasons set forth above, the Petition is DISMISSED as time-barred, and the Court denies a certificate of appealability.

Date:



Peter G. Sheridan, U.S.D.J.