

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JAMES SINCLAIR,

NOT FOR PUBLICATION

Petitioner,

v.

MEMORANDUM
AND ORDER

16-CV-5359 (WFK)

SUPERINTENDENT, SULLIVAN
CORRECTIONAL FACILITY,

Respondent.

-----X
WILLIAM F. KUNTZ, II, United States District Judge:

On October 6, 2016, James Sinclair (“Petitioner”), appearing *pro se*, filed this petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 seeking to vacate his 1997 Queens County sentence and conviction for murder in the second degree. *People v. Sinclair*, 268 A.D.2d 540 (2d Dep’t 2000).

By Memorandum and Order dated October 24, 2016, the Court granted petitioner’s request to proceed *in forma pauperis* and directed petitioner to show cause why the petition should not be dismissed as time-barred under the one-year statute of limitations period under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2244(d). On November 14, 2016, petitioner filed an affirmation in response to the Court’s Order alleging that he was under “substantial periods of severe mental incapacitation (during the years between 1992 and 1997)” and that he required care from the Mental Health Unit in 2014 and 2016. Pl.’s Affirmation at 4-5, ECF No. 10. On December 28, 2016, petitioner filed an addendum to his Affirmation arguing that he is entitled to equitable tolling based on his mental incapacity. Petitioner also filed an application for appointment of counsel. Add. to Pl.’s Affirmation at 1-2, ECF No. 11.

Having concluded that the petition should not be summarily dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, it is

ORDERED, that respondent file a complete and entire answer or other pleading in response to the petition within sixty (60) days of the date of this order, and it is further

ORDERED, that pursuant to Rule 5 of the Rules Governing Section 2254 Cases respondent shall address in the answer whether petitioner has exhausted state remedies and whether petitioner is entitled to equitable tolling of the statute of limitations based on mental incapacity, and it is further

ORDERED, that pursuant to Rule 6 of the Rules Governing Section 2254 Cases respondent shall conduct discovery solely as to petitioner's mental health treatment while in custody and produce to the Court any relevant information, and it is further

ORDERED, that pursuant to Rule 4 of the Rules Governing Section 2254 Cases, that the Clerk of Court shall serve copies of this Order, the petition for a writ of *habeas corpus*, the affirmation and addendum to the affirmation electronically upon the Attorney General of the State of New York and the District Attorney for Queens County, and it is further

ORDERED, that pursuant to Rule 5(e) of the Rules Governing Section 2254 Cases, petitioner shall file any reply to respondent's answer within thirty (30) days of the filing of the answer, and it is further

ORDERED, that petitioner's application for appointment of counsel is denied without prejudice to renewal, and it is further

ORDERED, that respondent shall serve a copy of this Order upon petitioner and file proof of service with the Clerk of the Court, within ten (10) days of the date of this Order.

SO ORDERED.

s/ WFK

~~WILLIAM F. KUNTZ, II~~
United States District Judge

Dated: January 25, 2017
Brooklyn, New York