

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>ARTHUR F. STOSS, SR.,</b>	:	<b>CIVIL NO. 1:17-CV-1253</b>
	:	
<b>Petitioner</b>	:	<b>(Chief Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>JAY LANE, THE ATTORNEY</b>	:	
<b>GENERAL OF THE STATE OF</b>	:	
<b>PENNSYLVANIA,</b>	:	
	:	
<b>Respondents</b>	:	

**MEMORANDUM**

Petitioner Arthur Stoss, Sr. (“Stoss”), an inmate presently confined at the Fayette State Correctional Institution, LaBelle, Pennsylvania, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). Stoss attacks a conviction imposed by the Court of Common Pleas of Luzerne County, Pennsylvania. (*Id.*) Presently before the court is Stoss’ request to stay the proceedings pending exhaustion of his state court remedies. (*Id.*) For the reasons that follow, this action will be stayed.

**I. Background**

In March 2011, Stoss was charged with first degree murder and criminal homicide. *Commonwealth v. Stoss*, CP-40-CR-0001540-2011 (criminal docket sheet). At the conclusion of a five-day trial, a jury convicted Stoss of first-degree murder. (*Id.*) On June 12, 2012, the trial court sentenced him to life in prison. (*Id.*) Stoss filed a timely appeal to the Pennsylvania Superior Court. (*Id.*) On August 7, 2013,

the Superior Court affirmed his judgment of sentence. Commonwealth v. Stoss, 2013 WL 11256473, No. 1374 MDA 2012 (Pa. Super. Aug. 7, 2013). On September 5, 2013, Stoss filed a petition for allowance of appeal with the Pennsylvania Supreme Court. Commonwealth v. Stoss, No. 676 MAL 2013 (Pa. Sept. 5, 2013). On January 21, 2014, the Pennsylvania Supreme Court denied Stoss' petition for allowance of appeal. Commonwealth v. Stoss, 623 Pa. 762 (Pa. Jan. 21, 2014).

On March 10, 2014, Stoss filed his first *pro se* petition pursuant to the Post Conviction Relief Act ("PCRA"), 42 PA. CONS. STAT. §§ 9541, et seq., collaterally attacking his conviction. Commonwealth v. Stoss, CP-40-CR-0001540-2011 (criminal docket sheet). The PCRA court appointed counsel, and PCRA counsel filed a supplemental petition on November 13, 2014. See Commonwealth v. Stoss, 2016 WL 5930533, \*2 (Pa. Super. 2016). On April 21, 2015, an evidentiary hearing was held on Stoss' PCRA petition. See id. On September 14, 2015, the PCRA court dismissed the petition. See id. PCRA counsel filed a timely appeal. See id. On September 8, 2016, the Superior Court affirmed the PCRA court's order denying post-conviction relief. Commonwealth v. Stoss, 2016 WL 5930533 (Pa. Super. 2016).

On January 20, 2017, Stoss filed a second *pro se* PCRA petition. Commonwealth v. Stoss, CP-40-CR-0001540-2011 (criminal docket sheet). Stoss' second PCRA petition is currently pending in state court. (Id.)

On June 26, 2017, Stoss filed the instant petition for writ of habeas corpus. (Doc. 1).

## II. Discussion

A state prisoner requesting habeas corpus relief pursuant to 28 U.S.C. §2254 must adhere to a statute of limitations that provides, in relevant part, as follows:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

...

(2) The 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 subsection.

28 U.S.C. § 2244(d)(1)-(2); see Jones v. Morton, 195 F.3d 153, 157 (3d Cir. 1999).

Thus, under the plain terms of § 2244(d)(1)(A), a state court criminal judgment does not become final until appeals have been exhausted or the time for appeal has expired. See Nara v. Frank, 264 F.3d 310, 314 (3d Cir. 2001); see also Harris v. Hutchinson, 209 F.3d 325, 327 (4th Cir. 2000) (“[T]he AEDPA provides that upon conclusion of *direct review* of a judgment of conviction, the one-year period within which to file a federal habeas petition commences, but the running of the period is suspended for the period when state post-conviction proceedings are *pending* in any state court.”) (emphasis in original).

Section 2244(d)(2) tolls the one-year statute of limitations with respect to the “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.” 28 U.S.C. § 2244(d)(2). Thus, when a petition or appeal has concluded and is no longer

pending, the one year statute of limitations starts to run and the time is counted. A “properly filed application” for post-conviction relief under § 2244(d)(2) is one submitted according to the state’s procedural requirements, such as rules governing time and place of filing. Lovasz v. Vaughn, 134 F.3d 146, 148 (3d Cir. 1998). The Third Circuit Court of Appeals has defined “pending” as the time during which a petitioner may seek discretionary state court review, whether or not such review is sought. Swartz v. Meyers, 204 F.3d 417 (3d Cir. 2000). “Pending,” however, does not include the period during which a state prisoner may file a petition for writ of certiorari in the United States Supreme Court from the denial of his state post-conviction petition. Stokes v. District Attorney of the County of Philadelphia, No. 99-1493, 2001 WL 387516, at \*2 (3d Cir. April 17, 2001). Likewise, the statute of limitations is not tolled under § 2244(d)(2) for the time during which a habeas petition is pending in federal court. Jones, 195 F.3d at 158.

The AEDPA statute of limitations may also be subject to equitable tolling. Equitable tolling of the limitations period is to be used sparingly and only in “extraordinary” and “rare” circumstances. See Satterfield v. Johnson, 434 F.3d 185, 195 (3d Cir. 2006); LaCava v. Kyler, 398 F.3d 271, 274-75 (3d Cir. 2005). It is only in situations “when the principle of equity would make the rigid application of a limitation period unfair” that the doctrine of equitable tolling is to be applied. See Merritt v. Blaine, 326 F.3d 157, 168 (3d Cir. 2003). Generally, a litigant seeking equitable tolling must establish the following two elements: “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.” Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005).

Stoss was sentenced on June 12, 2012. Under the plain terms of 28 U.S.C. § 2244(d)(1)(A), his judgment of sentence became final on April 21, 2014. The one-year period for the statute of limitations would commence running as of that date. However, pursuant to 28 U.S.C. § 2244(d)(2), when Stoss filed his first PCRA petition on March 10, 2014, the AEDPA's filing period was statutorily tolled, with the entire 365 days of the one-year filing period remaining. See Harris, 209 F.3d at 328. The statute remained tolled until October 10, 2016, when the time period expired for Stoss to seek review of the denial of his PCRA petition with the Pennsylvania Supreme Court. The statute then began running. The 365 days remaining in which to file his federal petition is set to expire on October 10, 2017. However, Stoss filed his second PCRA petition on January 20, 2017, and, if properly filed, the AEDPA's filing period may once again be subject to statutory tolling pursuant to 28 U.S.C. § 2244(d)(2). The second PCRA petition remains pending in state court.

Under certain circumstances, the United States Supreme Court has held that “it is appropriate to stay and abey the federal habeas proceedings while the petitioner exhausts his unexhausted claims in state courts.” Rhines v. Weber, 544 U.S. 269, 277-278 (2005). The Court specifically stated that the court should stay, rather than dismiss, a petition when a petitioner exhibits “reasonable confusion about whether a state filing would be timely” and thereby shows “good cause” for filing in federal court. Pace, 544 U.S. at 416-417. Additionally, “the time remaining on the one-year clock to file a federal habeas petition could reasonably be a component in the ‘good cause’ determination from Rhines.” Gerber v. Varano, 512

F. App'x 131, 135 (3d Cir. 2013). The Third Circuit Court of Appeals has provided that thirty days is a reasonable length of time to permit the filing of the post-conviction petition, and that petitioner should be given another thirty-day reasonable interval after the denial of that relief to return to federal court. Crews v. Horn, 360 F.3d 146 (3d Cir. 2004). In the event that a petitioner fails to meet either time limit, however, the stay should be vacated *nunc pro tunc*. Id. at 154.

Although Stoss has not exhibited any “reasonable confusion about whether a state filing would be timely” in order to show “good cause” for staying the instant petition, due to the fact that Stoss’ second PCRA petition is currently pending in state court, the court must act in this matter with an abundance of caution. See Gerber, 512 F. App'x at 135; Suarez v. Cameron, 2011 WL 3476476 (M.D. Pa. 2011) (finding “good cause” to justify a stay and abeyance because “dismissal of Suarez’s petition while he fully exhausts these state claims would ultimately cause him to run afoul of AEDPA’s statute of limitations”), adopted by 2011 WL 3475853 (M.D. Pa. 2011); Beasley v. Horn, 599 F. Supp. 2d 582, 588 (E.D. Pa. 2009) (concluding that the AEDPA’s limitation period was statutorily tolled while the petitioner’s properly filed second post-conviction petition was pending in state court). Thus, in order to protect Stoss’ due process rights, the instant petition will be stayed so that Stoss may exhaust his state court remedies.

An appropriate order will issue.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania

Dated: July 24, 2017