

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

<b>VICTOR PATTERSON,</b>	:	
	:	
<b>Petitioner</b>	:	
	:	<b>CIVIL NO. 3:CV-10-0965</b>
<b>v.</b>	:	
	:	<b>(Judge Caputo)</b>
<b>WILLIAM SCISM,</b>	:	
	:	
<b>Respondent</b>	:	

**O R D E R**

**THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

Victor Patterson has filed a *pro se* petition for writ of habeas corpus pursuant to [28 U.S.C. § 2254](#) challenging a 1994 Dauphin County Court of Common Pleas conviction for possession with intent to manufacture or deliver a controlled substance. Petitioner has paid the filing fee in this matter. Named as the sole respondent is William Scism, the Warden of LSCI-Allenwood where Mr. Patterson is presently incarcerated.

On April 11, 1994, Mr. Patterson was sentenced to a 3½ to 7 year term of imprisonment following a guilty plea.<sup>1</sup> Victor Patterson did not file a direct appeal. However, he did file a collateral challenges to his conviction in state court on

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<sup>1</sup> The Court takes judicial notice of Court of Common Pleas Dauphin County docket sheet in Mr. Patterson's criminal conviction: [Commonwealth v. Patterson, CP-22-CR-0000953-1993](#), which is available through Pennsylvania's Unified Judicial Docket System docket research at: <http://ujportal.pacourts.us/>.

October 29, 2008. On September 15, 2009, the Superior Court of Pennsylvania affirmed the trial court's denial of the petition as untimely. See [Commonwealth v. Patterson, 986 A.2d 1262 \(Pa. Super. 2009\)](#)(Table, No. 321 MDA 2009). On March 29, 2010, the Pennsylvania Supreme denied Mr. Patterson's Petition for Allowance of Appeal. See [Commonwealth v. Patterson, \\_\\_\\_ A.2d \\_\\_\\_, 2010 WL 1174205 \(Pa. Mar. 29, 2010\)](#)(Table, No. 876 MAL 2009). Mr. Patterson filed his habeas petition on May 5, 2010. Upon reviewing the file, it appears that the petition may be barred by the one-year statute of limitations set forth in [28 U.S.C. § 2244\(d\)\(1\)](#).

Pursuant to the United States Supreme Court's decision in [Day v. McDonough, 547 U.S. 198, 209-210, 126 S.Ct. 1675, 1684, 164 L.Ed.2d 376](#) (2006), a district court has the authority to consider, *sua sponte*, the timeliness of a state prisoner's habeas petition. In doing so, the parties must be afforded "fair notice and an opportunity to present their positions." *Id.* at 210, 126 S.Ct. at 1684. Similarly, in [U.S. v. Bendolph, 409 F.3d 155, 169 \(3d Cir. 2005\)](#)(en banc), the Third Circuit Court of Appeals held that a district court may raise the one-year statute of limitations on its own motion, provided the petition is afforded notice and an opportunity to respond. Thus, in accordance with *Day* and *Bendolph*, this Court will require the parties to submit briefs on the question of the timeliness of the petition. The Court will resolve the limitations issue prior to requiring Respondents to address the merits of the petition.

**AND NOW**, this 7th day of **MAY, 2010**, it is **ORDERED** that:

1. The Clerk of Court is directed to serve a copy of the petition (doc. 1) and this Order on Warden Scism, the Attorney General for the Commonwealth of Pennsylvania and the District Attorney of Dauphin County.
2. Within twenty-one (21) days of this Order, Respondents shall file a response addressing whether Petitioner's habeas petition is timely filed.
3. Petitioner is granted fifteen (15) days from the date of Respondents' submission to file a reply.
4. The Clerk of Court is to note the address of the Attorney General for the Commonwealth of Pennsylvania and the District Attorney for Dauphin County on the front of the docket sheet in this case.
5. All documents filed by the parties and by the Court shall be served upon Warden Scism, the Attorney General for the Commonwealth of Pennsylvania and the District Attorney for Dauphin County.

**/s/ A. Richard Caputo**  
**A. RICHARD CAPUTO**  
**United States District Judge**