

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

Mark Maurice Robinson, :
 :
 Petitioner : No. 4:CV-10-1985
 :
 vs. : Petition Filed 09/23/10)
 :
 Superintendent Raymond J. Sobina (Judge Muir)
 :
 Respondent :

MEMORANDUM AND ORDER

December *13*, 2010

Petitioner, Mark Maurice Robinson, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He attacks a conviction imposed by the Court of Common Pleas for York County, Pennsylvania. (Doc. 1). Presently before the Court is respondent's motion to dismiss the petition as untimely. (Doc. 15). Robinson maintains that the petition is timely. (Doc. 18). Following careful consideration of the parties' submissions, and for the reasons discussed below, the Court will grant respondent's motion to dismiss because the petition is not timely filed. See 28 U.S.C. § 2244(d).

Background

On March 21, 2003, after a jury trial in the York County

Court of Common Pleas, Robinson was found guilty of Murder in the First and Third Degree and sentenced to life. (See Doc. 15, Commonwealth of Pennsylvania v. Robinson, CP-67-CR-0000696-2002, Criminal Docket Sheet).

On May 12, 2003, petitioner filed a notice of appeal with the Pennsylvania Superior Court. Id.

On April 15, 2004, the Pennsylvania Superior Court affirmed Robinson's conviction. (Doc. 15, Superior Court Memorandum Opinion). Robinson did not file for allowance of appeal to the Pennsylvania Supreme Court or the United States Supreme Court.

On January 4, 2005, Robinson filed a timely pro se petition for relief under the Pennsylvania Post Conviction Relief Act ("PCRA"), 42 PA. CONS. STAT. §§ 9541-9546. (Doc. 15, Order of trial court).

On May 31, 2005, a hearing was held and the petition was denied. Id.

On June 24, 2005, Petitioner filed a an appeal to the Pennsylvania Superior Court. (See Doc. 15, Commonwealth of Pennsylvania v. Robinson, CP-67-CR-0000696-2002, Criminal Docket Sheet).

On March 28, 2006, the Pennsylvania Superior Court affirmed the denial of Robinson's PCRA petition. (Doc. 15, Superior Court Memorandum Opinion)

On April 27, 2006, the Petitioner filed a petition for allocatur to the Pennsylvania Supreme Court. (See Doc. 15, Commonwealth of Pennsylvania v. Robinson, CP-67-CR-0000696-2002, Criminal Docket Sheet).

On August 24, 2006, the Pennsylvania Supreme Court denied Robinson's petition for allowance of appeal. Id.

On August 26, 2010, petitioner filed the instant petition for writ of habeas corpus in the United States District Court for the Western District of Pennsylvania. (Doc. 1). By Order dated September 22, 2010, the action was transferred to the United States District Court for the Middle District of Pennsylvania. (Doc. 4).

In accordance with United States v. Miller, 197 F.3d 644 (3d Cir. 1999) and Mason v. Meyers, 208 F.3d 414 (3d Cir. 2000), the Court issued formal notice to Robinson that he could either have the petition ruled on as filed, that is, as a § 2254 petition for writ of habeas corpus and heard as such, but lose his ability to file a second or successive petition,

absent certification by the court of appeal, or withdraw his petition and file one all-inclusive § 2254 petition within the one-year statutory period prescribed by the Antiterrorism Effective Death Penalty Act ("AEDPA"). (Doc. 7). On October 20, 2010, Robinson returned the notice of election, indicating that he wished to proceed with his petition for writ of habeas corpus as filed. (Doc. 10).

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:

(d)(1) A one-year period of limitations 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 for seeking such review ...

(d)(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) (emphasis added); see generally,

Jones v. Morton, 195 F.3d. 153, 157 (3d Cir. 1999). Thus, under the plain terms of § 2244(d)(1)(A), the period of time for filing a habeas corpus petition begins to run when direct review processes are concluded. See 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 corpus 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); Fields v. Johnson, 159 F.3d 914, 916 (5th Cir. 1998) (per curiam); Hoggro v. Boone, 150 F.3d 1223, 1226 (10th Cir. 1998). It is not the conclusion of state post-conviction collateral review processes that starts the running of the limitations period. See Bunnell v. Yukins, No. 00-CV-73313, 2001 WL 278259, *2 (E.D. Mich. Feb 14, 2001) ("Contrary to Petitioner's assertion, the limitations period did not begin to run anew after the completion of his post-conviction proceedings.").

As indicated above, section 2244(d)(2) operates to exclude only the time within which a "properly filed application" for post conviction relief is pending in state court. Thus, when

a petition or appeal has concluded and is no longer pending, the one (1) 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.

Robinson's judgement of sentence in Criminal Case No. CP-67-CR-0000696-2002 was affirmed on April 15, 2004, and because

he did not file a petition for review in the Pennsylvania Supreme Court, the judgement became final at the expiration of the thirty-day period to file the petition for review. See Pa.R.App.P. 1113(a). Thus, his judgment of sentence was final on May 17, 2004.¹ The clock for filing a § 2254 petition then began to run on May 17, 2004 and Robinson had until May 17, 2005, to file a timely habeas corpus petition.

Pursuant to 28 U.S.C. § 2244(d)(2), when Robinson filed his PCRA petition on January 4, 2005, the AEDPA's filing period was statutorily tolled with approximately one hundred thirty-five (135) days of the one (1) year filing period remaining. See Harris, 209 F.3d at 328. On August 24, 2006, the Pennsylvania Supreme Court denied allocatur on Robinson's PCRA petition that was filed on January 4, 2005. The statutory period started to run again on August 24, 2006. Consequently, petitioner was required to file his habeas

¹In Robinson's case, because May 15, 2004, the last day of computation for finality of judgment, fell on Saturday, petitioner had until the following Monday, May 17, 2004 to begin the calculation of his one year to file his federal habeas petition. See Fed.R.Civ.P. 6(a)(3) (computation of the last day of a time period excludes Saturday, Sunday, and legal holidays)

corpus petition approximately, on or before January 8, 2007.² The instant petition was not filed until August 26, 2010, more than three years after the limitations period expired. Thus, the petition for habeas corpus relief appears to be barred by the statute of limitations.

Pursuant to 28 U.S.C. § 2244(d)(2), when Robinson filed his timely PCRA petition on January 4, 2005, the AEDPA's filing period was statutorily tolled with approximately one hundred thirty-five (135) days of the one (1) year filing period remaining. See Harris, 209 F.3d at 328. However, the AEDPA's one-year filing requirement is a statute of limitations, not a jurisdictional rule, and thus a habeas petition should not be dismissed as untimely filed if there exists an equitable basis for tolling the limitations period. Merritt v. Blaine, 326 F.3d 157, 161 (3d Cir. 2003). In Merritt, the Court of Appeals set forth two general requirements for equitable tolling: "(1) that the petitioner

²January 7, 2007, the last day for filing Robinson's federal petition, fell on Sunday, giving him until the following Monday, January 8, 2007 to file his federal habeas petition. See Fed.R.Civ.P. 6(a)(3) (computation of the last day of a time period excludes Saturday, Sunday, and legal holidays)

has in some extraordinary way been prevented from asserting his or her rights; and (2) that the petitioner has shown that he or she exercised reasonable diligence in investigating and bringing the claim." Id. (internal citations and quotations omitted). There is, however, absolutely no evidence of record to account for the delay in filing the instant petition for writ of habeas corpus. As such, equitable tolling is inapplicable in this matter. The petition will be dismissed. An appropriate Order accompanies this Memorandum Opinion.



MUIR
United States District Judge

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ORDER

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For the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED THAT:

1. Respondent's motion to dismiss the petition as untimely (Doc. 15) is **GRANTED**.
2. Respondent's motion to continue briefing schedule pending motion to dismiss (Doc. 16) is **DISMISSED** as moot.
3. The petition for writ of habeas corpus (Doc. 1) is **DISMISSED** as untimely under the statute of limitations. See 28 U.S.C. § 2244(d).
4. Petitioner's pending motion "seeking immediate remedy from systematic, insidious obstruction of justice" (Doc. 9), motion for "Federal Witness Protection and Emergency Transfer" (Doc. 12) and motion to amend (Doc. 18) are **DISMISSED** as moot.
5. The Clerk of Court is directed to **CLOSE** this case.

6. There is no basis for the issuance of a Certificate of Appealability. See 28 U.S.C. § 2253(c).

Muir

MUIR
United States District Judge