

STATE OF MAINE  
KENNEBEC, ss

SUPERIOR COURT  
CIVIL ACTION  
Docket No. CR-11-563  
NM-KEN - 9/9/2012

THOMAS CASTLE,

Petitioner

v.

STATE OF MAINE,

Respondent

ORDER ON STATE'S MOTION  
TO DISMISS AND  
PETITIONER'S MOTION TO  
EXTEND TIME

Before the court is the State's motion to dismiss the petition for post-conviction review and the petitioner's second motion to extend time. For the following reasons, the State's motion to dismiss is denied and the petitioner's motion to extend time is granted.

One June 7, 2010, the petitioner pleaded guilty to criminal charges in a Rule 11 proceeding. He was sentenced that day. On June 24, 2011, the petitioner filed a motion to extend the time within which to file a petition for post-conviction review. The motion was denied on 7/7/11. The petitioner filed a second motion to extend the time within which to file a petition. The court did not act on the second motion. The petitioner filed a petition for post-conviction review on 7/21/11.

The State argues the petition should have been filed by 6/8/11. Even allowing for a 21-day period of appeal, which is not available on a plea of guilty, the State argues the petition should have been filed on 6/28/11. The State argues that because the petition was filed beyond the one-year limit and the time limit is jurisdictional, the court is "without jurisdiction to hear this post-conviction." (Resp. Mot. 2.); 15 M.R.S. § 2128(5).

The petition for post-conviction review filing deadline was adopted in Maine in 1997 and is "modeled after the federal habeas corpus statute, 28 United States code, section 2244." Finch v. State, 1999 ME 108, ¶ 7, 736 A.2d 1043 (quoting L.D. 1533, Summary (118th Legis. 1997)). The U.S. Supreme Court has stated, while discussing the deadline imposed by the federal habeas corpus statute, "a statute of limitations defense . . . is not 'jurisdictional.'" Day v. McDonough, 547 U.S. 198, 205 (2006). Accordingly, the court declines to grant the motion to dismiss, especially considering the reasons stated by the petitioner in his second motion to extend time.

The entry is

The State's Motion to Dismiss is DENIED.

The Petitioner's Second Motion to Extend Time is GRANTED. The time within which to file the petition is extended to 7/21/11.

Date: August 9, 2012

  
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Nancy Mills  
Justice, Superior Court

THOMAS M CASTLE  
vs  
STATE OF MAINE

SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CR-2011-00563

**DOCKET RECORD**

PL. DOB: 12/03/1957  
PL. ATTY: DAVID PARIS  
72 FRONT STREET  
BATH ME 04530-2657  
APPOINTED 10/20/2011

State's Attorney: EVERT FOWLE

Filing Document: PETITION  
Filing Date: 07/21/2011

Major Case Type: POST CONVICTION REVIEW

**Charge (s)**

**Docket Events:**

07/28/2011 FILING DOCUMENT - PETITION FILED ON 07/21/2011

07/28/2011 POST CONVIC. REVIEW - REVIEW SENT FOR REVIEW ON 07/28/2011

10/18/2011 POST CONVIC. REVIEW - ASSIGNMENT ASSIGNED TO DOCKET ON 09/29/2011  
WILLIAM R ANDERSON , JUSTICE

10/18/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 07/21/2011

10/20/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 10/19/2011  
NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL

10/20/2011 Party(s): THOMAS M CASTLE  
ATTORNEY - APPOINTED ORDERED ON 10/20/2011

Attorney: DAVID PARIS

11/01/2011 ORDER - TRANSCRIPT ORDER FILED ON 11/01/2011

Attorney: DAVID PARIS  
PLEA AND SENTENCING

12/28/2011 SUPPLEMENTAL FILING - AMENDED PETITION FILED ON 12/27/2011

05/07/2012 MOTION - MOTION TO DISMISS FILED BY STATE ON 05/03/2012

05/07/2012 MOTION - MOTION FOR EXTENSION OF TIME FILED BY STATE ON 05/03/2012

05/07/2012 POST CONVIC. REVIEW - RESPONSE TO PETITION FILED ON 05/03/2012

05/07/2012 ORDER - TRANSCRIPT ORDER FILED ON 05/03/2012

05/07/2012 POST CONVIC. REVIEW - ASSIGNMENT ASSIGNED TO JUSTICE ON 05/03/2012  
NANCY MILLS , JUSTICE

05/08/2012 HEARING - MOTION FOR ENLARGEMENT OF TIME SCHEDULED FOR 05/29/2012 at 03:00 p.m.  
NANCY MILLS , JUSTICE  
NOTICE TO PARTIES/COUNSEL

05/08/2012 HEARING - MOTION FOR ENLARGEMENT OF TIME NOTICE SENT ON 05/08/2012

05/29/2012 HEARING - MOTION FOR ENLARGEMENT OF TIME CONTINUED ON 05/29/2012  
CR\_200

06/20/2012 HEARING - MOTION FOR ENLARGEMENT OF TIME SCHEDULED FOR 07/09/2012 at 03:00 p.m.  
NANCY MILLS , JUSTICE  
NOTICE TO PARTIES/COUNSEL

06/20/2012 HEARING - MOTION FOR ENLARGEMENT OF TIME NOTICE SENT ON 06/20/2012

07/11/2012 HEARING - MOTION FOR ENLARGEMENT OF TIME HELD ON 07/09/2012  
NANCY MILLS , JUSTICE  
Attorney: DAVID PARIS  
DA: PAUL RUCHA  
PHONE CONFERENCE

07/11/2012 POST CONVIC. REVIEW - PCR CONFERENCE HELD ON 07/09/2012  
NANCY MILLS , JUSTICE  
Attorney: DAVID PARIS  
DA: PAUL RUCHA

07/11/2012 MOTION - MOTION FOR EXTENSION OF TIME GRANTED ON 07/09/2012  
NANCY MILLS , JUSTICE  
AFTER TELEPHONE CONFERENCE, STATE'S MOTION TO EXTEND GRANTED OVER OBJECTION. COPY TO ATTY  
PARIS AND ADA RUCHA

07/11/2012 POST CONVIC. REVIEW - ORDER RESULTING FROM PCR CONF FILED ON 07/09/2012  
NANCY MILLS , JUSTICE  
EVIDENTIARY HEARING: 2 TO 4 HOURS. COPY TO ATTY  
PARIS AND ADA RUCHA

07/12/2012 HEARING - MOTION TO DISMISS SCHEDULED FOR 07/18/2012 at 02:00 p.m.  
NANCY MILLS , JUSTICE  
NOTICE TO PARTIES/COUNSEL

07/12/2012 HEARING - MOTION TO DISMISS NOTICE SENT ON 07/12/2012

07/12/2012 WRIT - HABEAS CORPUS TO PROSECUTE ORDERED ON 07/12/2012

07/12/2012 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 07/12/2012

CERTIFIED COPY TO SHERIFF DEPT.

07/19/2012 MOTION - OTHER MOTION FILED BY STATE ON 07/19/2012

DA: PAUL RUCHA  
MOTION FOR COURT ORDER REQUIRING ATTORNEY TO PROVIDE INFORMATION TO THE STATE'S ATTY.

07/20/2012 MOTION - OTHER MOTION GRANTED ON 07/19/2012  
NANCY MILLS , JUSTICE  
MOTION FOR COURT ORDER REQUIRING ATTORNEY TO PROVIDE INFORMATION TO THE STATE'S ATTY.

08/16/2012 MOTION - MOTION FOR EXTENSION OF TIME FILED BY PETITIONER ON 05/03/2012

08/16/2012 MOTION - MOTION FOR EXTENSION OF TIME GRANTED ON 08/09/2012  
NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL

08/16/2012 HEARING - MOTION TO DISMISS HELD ON 07/18/2012  
NANCY MILLS , JUSTICE  
Attorney: DAVID PARIS  
DA: PAUL RUCHA  
Defendant Present in Court

08/16/2012 MOTION - MOTION TO DISMISS DENIED ON 08/09/2012  
NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL

08/16/2012 ORDER - COURT ORDER FILED ON 08/09/2012

NANCY MILLS , JUSTICE

ORDER ON STATE'S MOTION TO DISMISS AND PETITIONER'S MOTION TO EXTEND TIME

A TRUE COPY

ATTEST: \_\_\_\_\_

Clerk