

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ANGEL MORENO,	:	
	:	
Petitioner	:	
	:	
v.	:	CIVIL NO. 1:CV-00-1541
	:	
DONALD T. VAUGHN, ET AL.,	:	(Judge Caldwell)
	:	
Respondent	:	

M E M O R A N D U M

I. Introduction

On April 19, 2000, Angel Moreno filed in the United States District Court for the Eastern District of Pennsylvania this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 21, 2000, the petition was transferred here.

Moreno challenges his January 27, 1992, conviction in the Court of Common Pleas of York County, Pennsylvania, on charges of involuntary deviate sexual intercourse. We will deny the petition because, as the respondents argue, it is barred by the one-year statute of limitations.

II. Background

It appears from the petition and response (styled as a motion to dismiss) that the following is the background to this litigation. On November 14, 1991, a jury convicted Moreno of

involuntary deviate sexual intercourse. On January 27, 1992, he was sentenced to five to ten years in prison.

Almost simultaneously, petitioner filed both a direct appeal and a petition under the Pennsylvania Post Conviction Relief Act (PCRA). 42 Pa. C.S. §§ 9541-9546. The direct appeal was filed on February 3, 1992, but not docketed until February 14, 1992. The PCRA petition was filed in the trial court on February 23, 1992.

Despite the pendency of the direct appeal, the trial court decided to entertain the PCRA petition and held a hearing on June 25, 1992. On October 1, 1992, the court denied the petition. On October 30, 1992, Moreno appealed the denial. It appears from his pro se petition that the Pennsylvania Superior Court denied the appeal on July 16, 1993.

As to the direct appeal, petitioner asserts that the superior court denied it on December 7, 1993. However, the respondents assert that the appeal was denied on February 3, 1994. We will accept the latter date. It is also the most favorable to the petitioner for limitations purposes.

In both instances, Moreno failed to file a timely allowance of appeal with the Pennsylvania Supreme Court.

On April 19, 2000, Moreno filed the instant petition, asserting the following grounds for relief: (1) actual innocence based on the purported failure of the prosecutor to present any physical evidence that a rape had in fact occurred; (2) "[t]he petitioner was denied the right to obtain an expert in the field of

DNA" (Id., ¶ 12. B.); and (3) "[i]neffective assistance of counsel whereas counsel failed to file a motion for discovery pursuant to Pa. R. Crim. P. Rule 305." (Id., ¶ 12. C.).

In opposition, the respondents contend that habeas corpus relief should be denied for the following reasons: (1) the petition is time-barred; (2) sufficient evidence was presented from which a reasonable jury could have concluded that a sexual encounter occurred and that it was not consensual; (3) no evidence in the record establishes that petitioner ever requested or otherwise motioned the trial court for appointment of a DNA expert; and (4) trial counsel was not ineffective in his representation of petitioner.

We need not address the other issues because we agree with the respondents that the petition is time-barred.

III. Discussion

The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, which became effective on April 24, 1996, established a one-year statute of limitations for petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254. In pertinent part, 28 U.S.C. § 2244(d)(1) provides as follows:

A 1-year period of limitation shall apply to an application for 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;

. . . .

"Under § 2244(d)(1)(A), a state court criminal judgment becomes 'final,' and the statute of limitations begins to run, "at the conclusion of review in the United States Supreme Court or when the time for seeking certiorari review expires." Jones v. Morton, 195 F.3d 153, 157 (3d Cir. 1999) (quoting Kapral v. United States, 166 F.3d 565, 575 (3d Cir. 1999)).

In the instant case, Moreno filed a direct appeal of his conviction with the Pennsylvania Superior Court, which affirmed the judgment on February 3, 1994. Under Pa. R. App. P. Rule 1113(a), Moreno had thirty days from that date to file a petition for allowance of appeal with the Pennsylvania Supreme Court. Thus, under section 2244(d)(1)(A), as interpreted by Jones, his conviction became final on March 3, 1994.¹

This date is before April 24, 1996, the effective date of the AEDPA. To avoid any improper retroactive effect of the new limitations period the Third Circuit decided that a petitioner whose conviction had become final before the effective date of the AEDPA had until April 23, 1997, to file a section 2254 petition. See

¹We need not decide the issue, but even if we tacked on the ninety days for seeking certiorari review from the United States Supreme Court, see United States Supreme Court Rule 13, it would make no difference to our analysis.

Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). Moreno did not file the instant petition until April 19, 2000, almost three full years after that date. It is therefore apparent that this action is barred by the applicable one-year statute of limitations. There also does not appear to be any statutory or equitable bases for tolling the statute. See Jones, supra.

We will issue an appropriate order.

William W. Caldwell
United States District Judge

Date: November 21, 2000

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O R D E R

AND NOW, this 21st day of November, 2000, it is ordered
that:

1. The Respondents' motion to dismiss is treated as a response to the petition so there are, in effect, no outstanding motions in this case.
2. The 28 U.S.C. § 2254 petition is denied as barred by the statute of limitations.
3. The Clerk of Court shall close this file.
4. Based on the court's memorandum, there is no basis for the issuance of a certificate of appealability.

William W. Caldwell
United States District Judge