

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESSIE L. MCSHAN,

Petitioner,

ORDER

v.

03-C-0024-C

THOMAS VANDEN BOOM,
Superintendent, Felmers Chaney
Correctional Center,

Respondent.

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. In an order entered February 3, 2003, the magistrate judge ordered petitioner Jessie McShan to submit additional information about the filing of his postconviction motion in the state courts. Petitioner has now submitted the information requested by the court and it shows what the magistrate judge predicted: petitioner missed his one-year deadline for filing his federal habeas petition. As explained in the February 3 order, petitioner's deadline for filing a federal habeas corpus petition expired on April 24, 1997, unless the statute had been tolled by petitioner's filing of a state court postconviction motion or motion for collateral relief. The supplemental documents filed by petitioner show that he did not file his petition for a writ of habeas corpus challenging his appellate lawyer's performance in the state court of

appeals until some time in 2002, well after his federal statute of limitations had expired. Accordingly, his habeas petition is untimely.

Insofar as petitioner appears to suggest that he did not discover until recently that his appellate lawyer did not submit a no merit report, the documents he has submitted defeat any such claim. One of the documents submitted by petitioner is a copy of a February 19, 1997, letter from the lawyer appointed to prosecute petitioner's appeal. According to the letter, petitioner authorized the lawyer in May 1996 to close the case without filing a no merit report because petitioner wanted to represent himself. If petitioner disagreed with his lawyer's statements, he should have sought postconviction relief then, not six years later. In fact, the state court of appeals found that petitioner's unexplained six-year delay in seeking a remedy for his appellate lawyer's alleged errors barred him from obtaining habeas relief. For this same reason, no grounds exist for excusing petitioner's failure to file his federal habeas petition within the time period prescribed by § 2244(d)(1).

ORDER

Accordingly, because the petition and the supplementary documents submitted by petitioner plainly show that petitioner missed the one-year statute of limitations for filing his federal habeas petition, IT IS ORDERED that petitioner's habeas corpus petition is DISMISSED WITH PREJUDICE pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

Dated this 26th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge