

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

JAMES SPRINGER,

Petitioner,

OPINION AND ORDER

v.

03-C-732-C

DANIEL BENIK, Warden, Stanley
Correctional Institution,

Respondent.

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Petitioner James Springer, an inmate at the Stanley Correctional Institution, seeks to challenge his 1997 conviction and resulting 40-year sentence for first-degree sexual assault of a child. Because I conclude that petitioner did not file his federal habeas petition until more than one year after his conviction became final and no circumstances exist that would justify tolling the statute of limitations, I must dismiss the petition as untimely under 28 U.S.C. § 2244(d).

FACTS

On December 6, 1995, petitioner entered a plea of guilty in the Circuit Court for Eau Claire County to one count of first degree sexual assault of a child. On February 4, 1997, petitioner was sentenced to a term of 40 years. Petitioner filed a notice of intent to pursue

postconviction relief. On or about March 10, 1997, the Office of the State Public Defender appointed attorney Charles Vetzner to represent petitioner in postconviction proceedings. Vetzner pursued a motion to amend the judgment to provide additional sentence credit to petitioner. On June 25, 1997, the court issued an amended judgment of conviction to reflect the modified sentence credit.

Neither petitioner nor any attorney acting on his behalf filed any direct appeal from the conviction. No further motions were filed in petitioner's case until November 24, 2002, when petitioner filed a *pro se* motion in the state court of appeals requesting the appointment of counsel and the reinstatement of his right to direct appeal. Petitioner alleged that Vetzner had been ineffective for refusing to pursue several issues and for closing his file without filing an appeal or no merit brief. After ordering Vetzner to respond, the court of appeals issued an order on December 23, 2002, in which it concluded that Vetzner had secured petitioner's sentence credit and that he had exercised professional judgment in deciding what issues to pursue postconviction. Petitioner filed a petition for review of the court of appeals' decision in the Wisconsin Supreme Court. That court denied the petition on April 22, 2003. Petitioner filed the instant petition for a writ of habeas corpus on December 22, 2003.

OPINION

The Antiterrorism and Effective Death Penalty Act of 1996 established a one year statute of limitations for all habeas proceedings running from certain specified dates. 28 U.S.C. § 2244. The one year limitation period begins to run from the latest of: 1) the date on which judgment in the state case became final by the conclusion of direct review or the expiration of the time for seeking such review; 2) the date on which any state impediment to filing the petition was removed; 3) the date on which the constitutional right asserted was first recognized by the Supreme Court, if that right was also made retroactively applicable to cases on collateral review; or 4) the date on which the factual predicate of the claims could have been discovered through the exercise of due diligence. See § 2244(d)(1)(A)-(D).

Petitioner appears to contend that his petition is timely under § 2244(d)(1)(A) because he brought it within one year after the state supreme court denied his petition for review of the court of appeals' decision denying his postconviction motion to reinstate his direct appeal. However, under § 2244(d)(1)(A), petitioner's conviction became "final" when the time expired within which he could have filed a direct appeal from his conviction. That occurred on July 15, 1997, or 20 days after the trial court entered its amended judgment reflecting the sentence credit modification. Wis. Stat. § (Rule) 809.30(2)(j) (party has 20 days from date of entry of postconviction decision in which to file notice of appeal). Petitioner's unsuccessful motion in November 2002 for reinstatement of his direct appeal did not undo the finality of that judgment.

Under § 2244(d)(1)(A), petitioner had one year from July 15, 1997, or until July 15, 1998, to file a federal petition for a writ of habeas corpus. He did not file his petition until more than five years later. Thus, his petition is untimely unless he can establish that this court should use one of the alternative dates set forth in subsections (B) through (D) as the start of his one-year limitations period.

Because petitioner is not bringing his petition on the basis of any newly-asserted constitutional right and has not alleged that there was any state-created impediment to filing his petition, the only provision that might apply to the petition is § 2244(d)(1)(D). Under that provision, the one-year statute of limitations begins to run on “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” However, petitioner is not entitled to the benefit of this provision. His submissions offer no explanation why it took him more than four years after his conviction became final to file his state petition for post-conviction relief and more than five years to file the instant § 2254 petition. Had petitioner exercised even the slightest bit of diligence, he would have discovered long before November 2002 the factual predicate of his claim, that is, that his lawyer had not pursued a direct appeal on his behalf. Although it is possible that petitioner did not understand until November 2002 that he had a *legal remedy* for his lawyer’s alleged mistake, “[t]ime begins [under § 2244(d)(1)(D)] when the prisoner knows (or through diligence could discover) the important facts, not when the prisoner recognizes their legal significance.” Owens v. Boyd, 235 F.3d 356, 359 (7th Cir.

2000). Because petitioner could have discovered back in July 1997 that his lawyer had not filed any notice of appeal or no merit brief, he is not entitled to a later starting date by virtue of § 2244(d)(1)(D).

Thus, the petition is untimely unless there is time that can be excluded by virtue of statutory or equitable tolling. Pursuant to 28 U.S.C. § 2244(d)(2), time is tolled, that is, it does not count against the one-year statutory period, while a properly filed application for postconviction relief is pending in state court. That provision does not help petitioner because he did not file any motion for postconviction relief in the state courts until November 24, 2002, well after his federal limitations period had expired. Once expired, there was no longer any time to which the tolling provision could apply.

Likewise, petitioner cannot benefit from the doctrine of equitable tolling. Although the Court of Appeals for the Seventh Circuit has not determined conclusively whether or to what extent the one-year deadline in § 2244(d)(1) is actually subject to the doctrine of equitable tolling, see Taliani v. Chrans, 189 F.3d 597, 597 (7th Cir. 1999), it has noted that equitable tolling "may be available when some impediment of a variety not covered in § 2244(d)(1) prevents the filing of a federal collateral attack." Owens, 235 F.3d at 360. Equitable tolling "excuses a timely filing when the plaintiff could not, despite the exercise of reasonable diligence, have discovered all the information he needed in order to be able to file his claim on time." Taliani, 189 F.3d at 597.

Apart from the alleged negligence of his appellate attorney, which I have already found inadequate to justify tolling under § 2244(d)(1)(D), petitioner has not identified any impediment that might excuse his failure to file his petition on time. Although petitioner points out that he is impaired by dyslexia, a learning disability and a lack of legal knowledge and has had to rely on the help of other inmates to pursue his claims, none of those allegations are sufficient to warrant equitable tolling. It is well-settled that a claim of ignorance of the law is not one of the “extraordinary circumstances” that justifies equitable tolling. See Turner v. Johnson, 177 F.3d 390, 392 (5th Cir. 1999) (“neither a plaintiff’s unfamiliarity with the legal process nor his lack of representation during the applicable filing period merits equitable tolling”); U.S. ex rel. Ford v. Page, 132 F. Supp. 2d 1112, 1115 (N.D. Ill. 2001) (citing cases).

As for petitioner’s alleged mental limitations, he has not made the necessary showing that he was prevented by his mental condition from “managing his affairs and thus from understanding his legal rights and acting upon them” during the more than four years between the time his conviction became final and the date on which he filed his motion for reinstatement of his direct appeal. Miller v. Runyon, 77 F.3d 189, 191 (7th Cir. 1996). To be entitled to equitable tolling on the basis of mental illness, petitioner must show more than that it is difficult for him to understand and act upon his legal rights; rather, he must show that he was *incapable* of preparing and filing a federal habeas petition or postconviction motion any earlier than he did. There is no evidence in the record from which I can find

that petitioner was incapacitated by any mental illness from bringing his federal petition earlier.

In sum, petitioner has failed to show that there were any external circumstances that impeded him from filing his federal habeas petition within the one-year limitations period prescribed by § 2244(d). Accordingly, the petition must be dismissed.

ORDER

IT IS ORDERED that the petition of James Springer for a writ of habeas corpus is DISMISSED WITH PREJUDICE for his failure to file it within the limitations period set forth in 28 U.S.C. § 2244(d).

Dated this 7th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge