

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

EDWIN C. WEST,

Petitioner,

OPINION AND ORDER

v.

05-C-166-C

STEVE WATTERS, Director, Sand Ridge
Secure Treatment Center,

Respondent.

OPINION

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Petitioner Edwin West is serving an indefinite term of confinement at the Sand Ridge Secure Treatment Center pursuant to a July 1, 1997, state court judgment adjudicating him to be a sexually violent person under Wisconsin's sexual predator law, Chapter 980.

Before the court is respondent's motion to dismiss the petition on the ground that petitioner failed to file it within the one-year limitations period for filing federal habeas actions, set forth in 28 U.S.C. § 2244(d). Petitioner concedes that he did not file his petition within the limitations period but argues that his misstep should be overlooked for equitable reasons. Alternatively, petitioner contends that the limitations period is an unconstitutional provision that violates his rights to equal protection. Neither of his contentions is persuasive.

Petitioner contends that his untimely filing should be excused under the doctrine of equitable tolling. Although the Court of Appeals for the Seventh Circuit has noted that there are few bases for equitable tolling that are not covered by the specific tolling provisions set forth at § 2244(d)(1)(B)-(D), Williams v. Sims, 390 F.3d 958, 960-61 (7th Cir. 2004), 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 v. Boyd, 235 F.3d 356, 360 (7th Cir. 2000). 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 597, 597 (7th Cir. 1999).

Petitioner asserts that equitable tolling is appropriate in his case because "[t]he mental health facility to which he was sent in 1997 does not give its patients access to United States code books." As a result, he had "no access to or knowledge of the provisions of 28 U.S.C. § 2244 during the time in which his time limitations under that section were running."

Petitioner's allegations could be construed as a claim that he was prevented from filing his petition on time by a state-created impediment, warranting tolling under § 2244(d)(1)(B). Whether treated as a statutory or equitable argument, however, petitioner's assertions are insufficient to warrant tolling the limitations period. First, petitioner has provided no evidentiary support for his assertion in his brief that he did not have access to § 2244 in 1997. Second, petitioner has not explained when he did eventually learn of §

2244 and has not described the steps that he took upon learning of it, so there is no basis on which to conclude that petitioner pursued his federal claims diligently once he learned about the limitations period. Finally, even if petitioner was not aware of § 2244 in 1997, the record shows that he was taking no action to challenge his confinement at that time. Notably, petitioner did not pursue a direct appeal of his state court judgment and took no action to challenge that judgment until nearly four years later, in March 2001. Petitioner's failure to pursue his federal claims diligently in state court suggests that his delay in filing his federal habeas petition had nothing to do with his alleged lack of access to § 2244. His unsupported and incredible assertions fall far short of demonstrating that he is entitled to statutory or equitable tolling.

Petitioner's challenge to the constitutionality of § 2244(d) is equally unfounded. Not only has petitioner failed to develop any meaningful equal protection argument, but there is no support for his suggestion that § 2244(d) discriminates unfairly against mental health patients. As petitioner admits, § 2244(d) applies to all persons in custody pursuant to a judgment of a state court, not just mentally ill persons. The purpose of the limitations period is to promote federal-state comity by promoting the finality of state court judgments. Clearly, Congress had a rational basis for passing such a statute. Petitioner's equal protection claim is without merit. (Because petitioner's challenge to the constitutionality of the one-year limitations period is undeveloped and patently without merit, there is no

reason to certify the question to the United States Attorney General under 28 U.S.C. § 2403(a).)

ORDER

IT IS ORDERED that the petition of Edwin West 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).

Entered this 21st day of June, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge