

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

CHRIS J. JACOBS,

Petitioner,

MEMORANDUM AND ORDER

v.

06-C-074-S

RICHARD SCHNEITER,

Respondent.

On February 6, 2006 petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming that his Taylor County conviction for burglary was unconstitutional. On February 27, 2006 respondent filed a motion to dismiss the petition as untimely. This motion has been fully briefed and is ready for decision.

FACTS

In 1988 petitioner was convicted in Taylor County Circuit Court of burglary. He claims that police misconduct caused him to plead no contest to felony burglary.

Petitioner filed his petition for a writ of habeas corpus in this Court on February 6, 2006.

MEMORANDUM

Pursuant to 28 U.S.C. § 2244(d) a one-year period of limitation shall apply to an application for a writ of habeas

corpus by a person in custody pursuant to judgment of a state court. The period commences from the date on which judgment becomes final by the conclusion of direct review. The statute further provides that the time during which a properly filed application for state post-conviction review concerning the pertinent judgment is pending shall not be counted toward this period of limitation. This statute took effect on April 24, 1996.

Since petitioner's state court judgment became "final" within the meaning of 28 U.S.C. §2244(d)(1)(A) before April 24, 1996 the effective date of the new statute, he had a one year period from that date to file his petition for habeas corpus. Lindh v. Murphy, 96 F.3d 856, 866 (7th Cir. 1996). Accordingly, the period in which he could timely file a petition for a writ of habeas corpus expired on April 24, 1997.

During this one year period petitioner did not have any properly filed application for state post-conviction review pending. Accordingly, there was no tolling of the one-year time period.

Petitioner argues that his petition is not time barred because he just became aware of facts concerning his case in 2005 and 2006. The statute, 28 U.S.C. §2244(d)(1)(D), provides that the one year statute of limitations may run from the date on which the factual predicate of the claim could have been discovered through the exercise of due diligence. Petitioner has not shown that the facts

he learned in 2005 and 2006 were relevant to his claim that police misconduct caused him to plead no contest to felony burglary. Accordingly, this exception to the one year statute of limitations is not applicable.

This petition for a writ of habeas corpus was not filed until February 6, 2006 almost nine years after the one-year statute of limitations had expired. Accordingly, petitioner's petition for a writ of habeas corpus is untimely pursuant to 28 U.S.C. § 2241(d)(1) and must be dismissed.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his petition must be dismissed. See Newlin v. Helman, 123 F.2d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice as untimely pursuant to 28 U.S.C. § 2244(d).

Entered this 10th day of March, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge