

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

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JAMES W. KNIPFER,

Petitioner,

v.

TIMOTHY LUNDQUIST,

Respondent.

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MEMORANDUM and ORDER  
06-C-482-S

On September 1, 2006 petitioner James W. Knipfer filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming that his state court conviction is unconstitutional. On September 28, 2006 respondent moved to dismiss petitioner's petition as untimely. Petitioner replied on October 10, 2006.

FACTS

On February 3, 1993 petitioner was convicted in Columbia County Circuit Court of two counts of first-degree reckless homicide and one count of armed burglary with the intent to commit a felony both while using a dangerous weapon. He was sentenced to two consecutive prison terms of life imprisonment to be followed by twenty five years imprisonment.

Petitioner appealed his conviction. The Wisconsin Court of Appeals dismissed Knipfer's appeal in May 1995. Petitioner filed

a petition for review with the Wisconsin Supreme Court which was denied on September 26, 1995. Petitioner's conviction became final on December 26, 1995 when he failed to file a petition for a writ of certiorari to the United States Supreme Court.

In May 2004 petitioner filed a challenge to his conviction in the circuit court. This motion was denied on August 20, 2005. The Wisconsin Court of Appeals affirmed the trial court's decision in May 2006. The Wisconsin Supreme Court denied petitioner's petition for review on July 25, 2006. Petitioner filed a petition for a writ of habeas corpus in this Court on September 1, 2006.

#### MEMORANDUM

Petitioner is challenging his state court conviction. 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.

Petitioner's state court judgment became "final" within the meaning of 28 U.S.C. §2244(d) (1) (A) upon the conclusion of direct

review or the expiration of the time for seeking such review. Petitioner's time for filing a petition for review with the Wisconsin Supreme Court expired on December 26, 1995. Because this date preceded the effective date of the Act petitioner had one year from April 24, 1996 or until April 24, 1997 to file his petition and failed to do so.

During this one year period petitioner did not have any properly filed application for state post-conviction review pending. The one year period had already expired when petitioner filed his state court post-conviction motion in May 2004. Accordingly, there was no tolling of the one-year time period.

This petition for a writ of habeas corpus was not filed until September 1, 2006 and is untimely pursuant to 28 U.S.C. § 2241(d)(1). Accordingly, it 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 as untimely. See Newlin v. Helman, 123 F.2d 429, 433 (7<sup>th</sup> 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 16<sup>th</sup> day of October, 2006.

BY THE COURT:

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JOHN C. SHABAZ  
District Judge