

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

TERRANCE MADISON,

Petitioner,

v.

WILLIAM POLLARD,

Respondent.

MEMORANDUM and ORDER
07-cv-437-jcs

On August 8, 2007 petitioner Terrance Madison filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming that his Eau Claire County Wisconsin convictions were unconstitutional. On October 4, 2007 respondent filed a motion to dismiss the petition as untimely. Petitioner responded on December 26, 2007.

FACTS

Petitioner was convicted after a jury trial of seven drug trafficking offenses in Eau Claire County Circuit Court in March 2002. He was sentenced to ten years of imprisonment and ten years of supervised release.

Petitioner appealed his convictions to the Wisconsin Court of Appeals. The Court of Appeals affirmed his conviction on January 21, 2004. The Wisconsin Supreme Court denied petitioner's petition for review on May 12, 2004.

On August 8, 2005 petitioner filed a Wis. Stat §974.06 postconviction motion in the trial court which was denied. On February 13, 2007 the Wisconsin Court of Appeals held that petitioner's arguments were procedurally barred. The Wisconsin Supreme Court denied petitioner's petition for review on July 17, 2007.

Petitioner filed this petition for a writ of habeas corpus on August 8, 2007.

MEMORANDUM

Respondent moves to dismiss petitioner's petition for a writ of habeas corpus as untimely. 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 on direct review or the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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 one year period for filing a petition for a writ of habeas corpus begins to run on the conclusion of direct review

or the expiration of the time for seeking such review. Petitioner's one year period commenced ninety days after the Wisconsin Supreme Court denied petitioner's petition for review of the Court of Appeals' order affirming his convictions. This date was August 8, 2004. Accordingly, the one year period in which petitioner could file a petition for a writ of habeas corpus in this Court would have expired on August 8, 2005.

On August 8, 2005 petitioner filed a state postconviction motion after 364 days of his limitation period had run. His application remained pending until July 17, 2007 when the Wisconsin Supreme Court denied his petition for review. Petitioner's one year time period was tolled from August 8, 2005 until July 17, 2007. He had one day after July 17, 2007 remaining on his one year period to file his petition for a writ of habeas corpus.

Petitioner failed to file his petition for a writ of habeas corpus until August 8, 2007 which was after his one year limitation period 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 as untimely. See Newlin v. Helman, 123 F.2d 429, 433 (7th Cir. 1997).

Madison v. Pollard, 07-2cv-437-jcs

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 3rd day of January, 2008.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge