

## ADDENDUM

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOHN J. BLODGETT,

Petitioner,

v.

ERIN GAFFNEY,

Respondent.

Civil Action No. 17-12501-LTS

ORDER DISMISSING PETITION (DOC. NO. 1) AND  
DENYING MOTION TO APPOINT COUNSEL (DOC. NO. 27)

May 1, 2018

SOROKIN, J.

John J. Blodgett, a prisoner at Old Colony Correctional Institution in Bridgewater, Massachusetts, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Blodgett filed his federal claims almost forty years after the conviction and sentence he wishes to challenge became final, and twenty years after the one-year limitation period for filing a federal habeas petition expired. His petition is DISMISSED as untimely, and his motion to appoint counsel is DENIED.

I. BACKGROUND

On June 27, 1977, after a jury trial in Suffolk Superior Court, Blodgett was convicted of first-degree murder, armed robbery, kidnapping, and two related assault charges. Doc. No. 1 at 2; Commonwealth v. Blodgett, 386 N.E.2d 1042, 1043 (Mass. 1979). The charges arose from the shooting, stabbing, and beating of two college students hitchhiking back to their dormitory in March 1975. Blodgett, 386 N.E.2d at 1043. One victim (miraculously) lived; the other died. Id.

The surviving victim identified Blodgett as the driver of the car, and as one of four men involved in the deadly assault. Id. The car used in the crime was found burning later that night with a set of keys in the ignition. Id. One key fit the door to Blodgett's apartment. Id.

At trial, Blodgett testified that he had stolen the car involved in the crime sometime earlier, that he had driven it to a bar in Boston on the night in question, that he had encountered his alleged co-venturer (Robert Shaughnessy) at the bar, and that he had discovered his car and his keys were missing when he left the bar that night. Id. He said he later learned the car had been involved in a crime, and so he fled. Id. Blodgett was arrested two years later in Texas. Id. Before Blodgett's arrest, Shaughnessy committed suicide in jail while awaiting trial for the same offenses. Doc. No. 10 at 5.

Blodgett received a life sentence. Doc. No. 1 at 2. He filed a timely appeal, R.P.D. at 6,<sup>1</sup> and the Supreme Judicial Court ("S.J.C.") affirmed his conviction and sentence on March 8, 1979, Blodgett, 386 N.E.2d at 1043. Blodgett did not seek certiorari in the United States Supreme Court. R.P.D. at 8, 71. In February 1982, Blodgett filed his first motion for a new trial in state court, and in July 1982, before the first motion was resolved, he filed a second post-conviction motion seeking "release from unlawful restraint." R.P.D. at 8. The Superior Court promptly denied both motions. R.P.D. at 8-9, 75-82. Blodgett filed a third post-conviction motion in state court in August 1985. R.P.D. at 9. That motion was denied a year later, after a hearing. R.P.D. at 10, 83-85. Blodgett's fourth post-conviction motion, filed in May 1989 and then amended after counsel was appointed, was denied in March 1990. R.P.D. at 11, 86-88.

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<sup>1</sup> The Court served Blodgett's petition and ordered the respondent to gather and file certain relevant information from the state court dockets. Doc. No. 13. The respondent complied, filing Respondent's Production of Documents (cited herein as "R.P.D.") in a bound volume on file with the Clerk. See Doc. Nos. 25, 26.

It appears as though Blodgett's attempts to secure further review in the SJC of the rulings rejecting his post-conviction claims were unsuccessful. See R.P.D. at 104-05 (reflecting Single Justice cases were opened in the SJC and disposed of in 1983, 1986, and 1990). In October 1990, Blodgett sought federal habeas review in this Court, but his petition was dismissed for failure to exhaust his claims. See Memo. & Order, Blodgett v. Ponte, No. 90-cv-12520-EFH, ECF No. 5 (D. Mass. 1990 Oct. 23, 1990) (reflecting in docket text that Judge Harrington compared "the ten grounds raised" in Blodgett's federal petition with "the three grounds raised" before the SJC to conclude Blodgett had not exhausted "most of the grounds raised here").

The state court dockets reflect no further filings between 1990 and 1999, when the paper dockets were converted to an electronic docketing system. See R.P.D. at 11, 66, 71-72. According to Blodgett, he filed a "state habeas corpus petition" in 1998, but the Superior Court "denied [it] without prejudice (because it was the w[ro]ng legal instrument)." Doc. No. 10 at 9.<sup>2</sup> In March 2010, December 2012, and February 2013, Blodgett filed a series of motions seeking to correct the mittimus issued in his case with respect to the concurrency of term-of-years sentences imposed on certain non-homicide counts. R.P.D. at 66, 69, 89. Those motions were allowed on February 21, 2013. R.P.D. at 67, 70.

The next event reflected on the state court dockets is Blodgett's filing of another motion for a new trial on June 6, 2016. R.P.D. at 67, 70. The Superior Court denied that motion on April 13, 2017. R.P.D. at 68, 90-91. The SJC denied review on August 21, 2017, and denied reconsideration on September 8, 2017. R.P.D. at 73-74, 106-09.

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<sup>2</sup> The Court need not solicit further information on the timing or disposition of this filing, which is not reflected on the state court dockets submitted by the respondent, as it would not alter the timeliness analysis that follows.

On December 11, 2017, Blodgett signed the presently pending federal habeas petition, which this Court received and docketed on December 18, 2017. Doc. No. 1. In his pro se petition, Blodgett raises two challenges to his conviction and sentence: 1) a claim that prosecutors in his case violated Brady v. Maryland, 373 U.S. 83 (1963), by concealing information related to the surviving victim's pretrial identification of his assailants and by suborning perjury by the victim and a detective at trial; and 2) a claim that Blodgett could not legally be convicted as a joint venturer because his co-defendant had died before being convicted in connection with the alleged joint venture. Doc. No. 1 at 7, 9.

Blodgett was granted additional time in which to submit a memorandum of law and appendix in support of his federal claims. Doc. Nos. 2, 8, 9, 11. Because it appeared likely based on an initial screening that the petition was untimely, the Court did not require the respondent to answer Blodgett's claims; rather, the Court ordered the respondent to collect and submit information from the state court dockets to facilitate a complete assessment of the petition's timeliness. Doc. No. 13. That information was submitted on April 23, 2018. Doc. No. 25. On April 25, 2018, Blodgett filed a motion seeking appointment of counsel and a memorandum opposing dismissal on timeliness grounds. Doc. Nos. 27, 28.

Having carefully reviewed all of Blodgett's submissions, as well as the state court records provided by the respondent, the Court concludes Blodgett's federal claims are hopelessly untimely, and finds no justification for the appointment of counsel.

## II. DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a one-year period of limitation on applications for writs of habeas corpus, and provides that such period "shall run from the latest of":

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). Statutory tolling of the limitation period is permitted for “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending.” § 2244(d)(2).

Blodgett’s judgment of sentence became final no later than June 6, 1979, when the ninety-day period for seeking certiorari in the United States Supreme Court on direct appeal expired. See Gonzalez v. Thaler, 565 U.S. 134, 653-54 (2012) (holding that “judgment becomes final” for AEDPA purposes “when the time for pursuing direct review in [the Supreme] Court . . . expires”). Because Blodgett’s conviction became final before the enactment of AEDPA, he is entitled to a “grace period,” pursuant to which the period for filing his federal claims did not begin until AEDPA’s effective date of April 24, 1996. Gaskins v. Duval, 183 F.3d 8, 9 (1st Cir. 1999) (per curiam). As such, absent tolling or a statutory exception, Blodgett was required to file his federal petition on or before April 24, 1997. Id. Because Blodgett filed his petition twenty years later, it is untimely unless he qualifies for an alternative start date for his federal limitation period, see § 2244(d)(1)(B)-(D), or he establishes the limitation period was tolled.

Blodgett has not claimed that any state action impeded his ability to file a timely federal habeas petition. To the extent he asserts his appellate counsel raised the wrong claims on direct appeal, that he was “prey[ed] upon” by “jailhouse lawyers,” and that the state courts “refused to

# United States Court of Appeals For the First Circuit

No. 18-1495

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JOHN J. BLODGETT,

Petitioner, Appellant,

v.

ERIN GAFFNEY, Superintendent,

Respondent, Appellee.

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Before

Torruella, Lynch and Kayatta,  
Circuit Judges.

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## JUDGMENT

Entered: June 26, 2019

Petitioner John J. Blodgett seeks a certificate of appealability ("COA") as to the district court's dismissal of his 28 U.S.C. § 2254 petition on untimeliness grounds. We have reviewed carefully Blodgett's submissions and relevant portions of the record. We conclude that the district court's denial of the petition was neither debatable nor wrong, and that petitioner therefore has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 484 (2000) (COA standard); Miller-El v. Cockrell, 537 U.S. 322, 327 (2003) (same). Blodgett's request for appointment of counsel in this court is denied.

The application for a COA is denied, and the appeal is terminated.

By the Court:

Maria R. Hamilton, Clerk

**Additional material  
from this filing is  
available in the  
Clerk's Office.**