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APPENDIX A

 A-1

Amended CLD-280 July 30, 2015

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **15-2190**

PAUL SATTERFIELD

vs.

DISTRICT ATTORNEY PHILADELPHIA, ET AL.

(E.D. Pa. CIV. NO. 02-cv-00448)

Present: FUENTES, GREENAWAY, JR. and VANASKIE, Circuit Judges

Submitted are:

(1) Appellant's application for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

(2) Appellant's motion to expedite the appeal and for leave to proceed on the original record, F.R.A.P. 24;

(3) Appellant's motion to have the Court disregard I.O.P. 9.1;

(4) Appellant's motion for expedited consideration of his motion for bail pursuant to F.R.A.P. 23(b); and

(5) Appellant's motion to have his motion for expedited consideration of his bail motion treated as uncontested

***(6) Appellant's "Request for Expedited Consideration, etc.," filed on August 3, 2015**

in the above captioned case.

Respectfully,

Clerk

MMW/LLB/tmm

ORDER

The foregoing application for a certificate of appealability is granted with respect to the issue whether McQuiggin v. Perkins, 133 S. Ct. 1924, 1928 (2013), is adequate,

either standing alone or in tandem with other factors, to invoke relief from final judgment under Fed. R. Civ. P. 60(b)(6), see Cox v. Horn, 757 F.3d 113, 124 (3d Cir. 2014), cert. denied, 135 S. Ct. 1548 (2015), and in light of appellant's valid claim that counsel was constitutionally ineffective for failing to interview and call Eric and Grady Freeman to testify at trial. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (certificate of appealability warranted where prisoner shows that jurists of reason would find it debatable whether petition states valid claim of denial of constitutional right and that jurists of reason would find it debatable whether district court was correct in its procedural ruling). In all other respects, the application is denied. Appellant's motion for bail pursuant to Fed. R. App. P. 23(b) is denied. Appellant's motion to have the Court disregard I.O.P. 9.1 (en banc consideration required to overrule holding in precedential opinion of previous panel) is denied. Appellant's motion to proceed on the original record is granted, Fed. R. App. P. 24(c). All other motions, including the motions to expedite, are denied.

By the Court,

s/ Thomas I. Vanaskie
Circuit Judge

Dated: 10/7/15

JT/cc: Federal Community Defender Eastern District of Pennsylvania
Susan E. Affronti, Esq.
Paul Satterfield

A-2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD, **Petitioner,** **v.** **PHILIP L. JOHNSON,** **THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA, and** **THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,** **Respondents.**	**CIVIL ACTION** **NO. 02-448**

FILED APR 15 2015

ORDER

AND NOW, this 15th day of April, 2015, upon consideration of pro se petitioner Paul Satterfield's Motion for Relief from Judgment and Orders [Pursuant to Federal Rule of Civil Procedure 60(b)] ("Rule 60(b) Motion") (Document No. 94, filed March 31, 2014); a letter from pro se petitioner dated January 20, 2015;[1] and pro se petitioner's Praecipe to Enter Default (Document No. 95, filed April 13, 2015), **IT IS ORDERED** as follows:

1. That part of Satterfield's Rule 60(b) Motion which seeks to substitute "John E. Wetzel" in place of "Philip L. Johnson" as Secretary of the Pennsylvania Department of Corrections is **GRANTED**, and the caption shall be **AMENDED** to reflect that substitution;[2]

2. Satterfield's Rule 60(b) Motion is **DENIED** in all other respects; and

3. Satterfield's Praecipe to Enter Default is **REJECTED**.

IT IS FURTHER ORDERED that a certificate of appealability **WILL NOT ISSUE** on the ground that reasonable jurists would not debate this Court's procedural rulings with respect

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[1] A copy of pro se petitioner's letter dated January 20, 2015, shall be docketed by the Deputy Clerk.

[2] John E. Wetzel became the Secretary of the Pennsylvania Department of Corrections in December 2010. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, John E. Wetzel is substituted for Philip L. Johnson as a respondent in this case.

ENTERED
APR 16 2015
CLERK OF COURT

to Satterfield's claims or whether Satterfield has stated a valid claim of the denial of a constitutional right. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c).

The decision of the Court is based on the following:

I. INTRODUCTION

1. Pro se petitioner Paul Satterfield was convicted of first-degree murder and possession of instruments of crime on June 10, 1985, in the Court of Common Pleas of Philadelphia County. On that date, he was sentenced to life imprisonment on the murder conviction and a consecutive term of two-and-a-half years' imprisonment on the conviction for possession of instruments of crime.

2. On January 28, 2002, Satterfield filed a Petition for Writ of Habeas Corpus in this Court pursuant to 28 U.S.C. § 2254. By Order and Memorandum dated June 21, 2004, this Court granted the Petition with respect to the claim that Satterfield's trial counsel was ineffective. See Satterfield v. Johnson, 322 F. Supp. 2d 613 (E.D. Pa. 2004). In that Order, the Court vacated Satterfield's convictions and sentence, and stayed the execution of the writ of habeas corpus for 180 days to permit the Commonwealth of Pennsylvania ("the Commonwealth") to grant Satterfield a new trial.

3. The Commonwealth appealed the Court's decision to the United States Court of Appeals for the Third Circuit on July 21, 2004. The Third Circuit reversed this Court's decision by Judgment and Opinion dated January 17, 2006, ruling that Satterfield's Petition for Writ of Habeas Corpus was time-barred under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). See Satterfield v. Johnson, 434 F.3d 185, 188 (3d Cir. 2006). The Third Circuit determined that, although the Commonwealth had failed to mention timeliness in its Notice of Appeal, it had not waived that argument. See id. at 190-91. On remand, in accordance with the

Third Circuit's mandate, this Court dismissed Satterfield's Petition for Writ of Habeas Corpus by Order dated April 19, 2006.

4. Presently before the Court are Satterfield's Rule 60(b) Motion and Praecipe to Enter Default. In his Rule 60(b) Motion, Satterfield challenges the validity of this Court's April 19, 2006 Order, and contends that he is currently being unlawfully imprisoned in the absence of a valid conviction and judgment of sentence. Liberally construing the Rule 60(b) Motion, the Court concludes that Satterfield is raising two principal arguments:[3] (1) this Court's April 19, 2006 Order is "void" because the Third Circuit lacked subject matter jurisdiction to order that his Petition for Writ of Habeas Corpus be dismissed; and (2) his Petition for Writ of Habeas Corpus should not have been dismissed as untimely because under McQuiggin v. Perkins, 133 S. Ct. 1924 (2013), his claims of actual innocence entitle him to an exception to the limitations period. In his Praecipe to Enter Default pursuant to Federal Rule of Civil Procedure 55(a), Satterfield requests that a default be entered against respondents because they did not respond to his Rule 60(b) Motion. The Court addresses the issues raised by Satterfield's filings in turn.

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[3] Satterfield also argues that the District Attorney of the County of Philadelphia should be dismissed from the case and that anything filed by the District Attorney, including the Notice of Appeal, should be stricken from the record because the District Attorney is not a proper party to this action. According to Satterfield, this entitles him to the relief requested in his Rule 60(b) Motion because the District Attorney never had standing to pursue an appeal of this Court's original decision to grant his Petition for Writ of Habeas Corpus. The Court rejects this argument. The District Attorney was lawfully added as a party to this action by Order dated April 9, 2002, and thus had standing to pursue an appeal. See Konya v. Meyers, No. 03-4065, 2004 WL 1171730, at *4 n.18 (E.D. Pa. May 24, 2004), report and recommendation adopted, No. 03-4065, 2004 WL 2203727 (E.D. Pa. Sept. 30, 2004) ("[I]t is not clear that, under the caselaw in the Third Circuit, Rule 2(a) prohibits the inclusion of the District Attorney and the Attorney General as respondents (in addition to the Superintendent), especially where the Attorney General specifically indicated an interest in filing an opposing response to the habeas petition.") (emphasis in original) (citations omitted).

II. SATTERFIELD'S RULE 60(B) MOTION IS NOT A SECOND OR SUCCESSIVE HABEAS PETITION

5. The Court must first determine whether Satterfield's pending Rule 60(b) Motion is, in essence, a second or successive petition for habeas relief. Such a ruling is required because the AEDPA requires a petitioner to obtain certification from the Court of Appeals authorizing the District Court to address a second or successive habeas petition. See 28 U.S.C. § 2244(b)(3)(A).

6. A Rule 60(b) motion is treated as a successive habeas petition if it is based on a challenge to the underlying conviction. Only when a Rule 60(b) motion challenges the manner in which an earlier habeas corpus judgment was procured can it be adjudicated on the merits without Court of Appeals authorization. Pridgen v. Shannon, 380 F.3d 721, 727 (3d Cir. 2004). A motion that attacks the habeas court's previous resolution of a claim on the merits constitutes a second or successive habeas petition. Gonzalez v. Crosby, 545 U.S. 524, 532 (2005) (emphasis omitted).

7. The Court concludes that Satterfield's Rule 60(b) Motion is not a second or successive habeas petition. Rather than attacking his underlying conviction, the Motion purports to challenge the validity of this Court's April 19, 2006 Order, and the propriety of the Third Circuit's application of the AEDPA's statute of limitations in light of McQuiggin. The Motion thus attacks the manner in which Satterfield's habeas petition was dismissed and is therefore properly treated as a Rule 60(b) motion, not a second or successive habeas petition. See, e.g., Akiens v. Wynder, No. 06-5239, 2014 WL 1202746, at *2 (E.D. Pa. Mar. 24, 2014) (concluding that petitioner's Rule 60(b) motion challenging application of statute of limitations in light of McQuiggin was not a second or successive habeas petition).

III. SATTERFIELD'S ARGUMENT THAT THE THIRD CIRCUIT LACKED SUBJECT MATTER JURISDICTION TO ISSUE ITS MANDATE IS WITHOUT MERIT

8. Satterfield argues first that this Court's April 19, 2006 Order is void because the Third Circuit lacked subject matter jurisdiction to order that his Petition for Writ of Habeas Corpus be dismissed. According to Satterfield, this means that the Court's Order dated June 21, 2004, in which the Court initially granted his Petition, remains "lawfully effective" and entitles him to "be immediately released from lengthy continuing unlawful imprisonment." This argument is meritless, and it is one that Satterfield has previously raised, and this Court has rejected, numerous times. See Order dated July 27, 2011; Order dated August 10, 2011; Order dated November 4, 2011; Order dated November 22, 2011.

9. As the Court explained in its Order dated November 4, 2011, the Third Circuit determined that, although the Commonwealth had failed to mention timeliness in its Notice of Appeal, it had not waived that argument. See Satterfield, 434 F.3d at 190-91. The Third Circuit then remanded the case to this Court "for dismissal in accordance with" its opinion. Id. at 196. This Court is bound by the Judgment and Opinion of the Third Circuit. See Cooper Distrib. Co. v. Amana Refrigeration, Inc., 180 F.3d 542, 546 (3d Cir. 1999) (quoting Bankers Trust Co. v. Bethlehem Steel Corp., 761 F.2d 943, 949 (3d Cir. 1985)) (""It is 'axiomatic' that on remand after an appellate court decision, the trial court 'must proceed in accordance with the mandate and the law of the case as established on appeal.'"); Noel v. United Aircraft Corp., 359 F.2d 671, 674 (3d Cir. 1966) ("Where the reviewing court in its mandate prescribes that the court shall proceed in accordance with the opinion of the reviewing court, such pronouncement operates to make the opinion a part of the mandate as completely as though the opinion had been set out at length."). Accordingly, the Court denies that part of Satterfield's Rule 60(b) Motion in which he

argues that the Third Circuit lacked subject matter jurisdiction to order that his Petition for Writ of Habeas Corpus be dismissed.

IV. SATTERFIELD'S ARGUMENT THAT HE IS ENTITLED TO RELIEF IN LIGHT OF THE SUPREME COURT DECISION IN MCQUIGGIN V. PERKINS IS UNAVAILING

10. Next, Satterfield argues that he is entitled to relief under Rule 60(b)(6) in light of the Supreme Court decision in McQuiggin v. Perkins. In McQuiggin, the Court held that a claim of actual innocence, if proven, provides an equitable exception to the one-year statute of limitations in 28 U.S.C. 2244(d)(1). See 133 S. Ct. at 1928.

11. Rule 60(b)(6), the catch-all provision, permits a party to seek relief from a final judgment "when the movant shows 'any. . . reason justifying relief from the operation of the judgment' other than the more specific circumstances set out in Rules 60(b)(1)-(5)." Gonzalez, 545 U.S. at 528-29 (citations omitted). However, "courts are to dispense their broad powers under 60(b)(6) only in 'extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur.'" Cox v. Horn, 757 F. 3d 113, 120 (3d Cir. 2014) (quoting Sawka v. Healtheast, Inc., 989 F.2d 138, 140 (3d Cir. 1993)). Such extraordinary circumstances "rarely occur in the habeas context." Gonzalez, 545 U.S. at 535. Moreover, "[i]ntervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." Agostini v. Felton, 521 U.S. 203, 239 (1997).

12. The Court concludes that Satterfield has not shown extraordinary circumstances sufficient to warrant relief under Rule 60(b)(6). McQuiggin was decided more than seven years after this Court's April 19, 2006 Order, and therefore constitutes a "development[] in the law," which "rarely constitute[s]" extraordinary circumstances sufficient for Rule 60(b)(6) relief. Agostini, 521 U.S. at 239. Satterfield has not cited any authority in support of his contention or convinced the Court that the legal development in McQuiggin constitutes extraordinary

circumstances, and this Court and several other courts have held otherwise. See, e.g., Pridgen v. Shannon, No. 00-4561, 2014 WL 1884919, at *3–*4 (E.D. Pa. May 12, 2014); Akiens, 2014 WL 1202746, at *3 (collecting cases); Gonzalez, 545 U.S. 524 (rejecting petitioner's argument that he was entitled to habeas relief pursuant to Rule 60(b)(6) based on subsequent Supreme Court decision under which his petition would have been deemed timely). The Court finds these cases persuasive and denies this part of Satterfield's Rule 60(b) Motion on the ground that the legal development in McQuiggin does not constitute extraordinary circumstances sufficient to warrant Rule 60(b) relief.

V. SATTERFIELD'S PRAECIPE TO ENTER DEFAULT IS REJECTED

13. In his Praecipe to Enter Default, Satterfield requests that a default be entered against respondents because they did not respond to his Rule 60(b) Motion. See Fed. R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.").

14. Rule 55 is inapplicable because "default judgments are not available in habeas actions." Broadbent v. Mitchell, No. 09-1616, 2009 WL 3698131, at *2 (D.S.C. Nov. 3, 2009) (collecting cases); see also Rule 5(a) of the Rules Governing Section 2254 Cases in the United States District Courts. Even if Rule 55 was applicable, Satterfield has not cited any authority to support the contention that the failure to respond to a motion, as opposed to an initial pleading, constitutes a failure to "plead or otherwise defend" under Rule 55, and the Court has found no such authority.

15. Respondents filed a response to Satterfield's Petition for Writ of Habeas Corpus. Thus, any alleged failure to respond to Satterfield's Rule 60(b) Motion would not entitle him to an entry of default. See Green v. Knowlin, No. 09-840, 2010 WL 569572, at *7 (D.S.C. Feb. 11,

2010) ("[A]s the respondent timely responded to Green's Petition [for Writ of Habeas Corpus], his alleged failure to respond to Green's motion [for summary judgment] would not entitle Green to judgment even if Rule 55 were applicable.") (emphasis in original). Furthermore, a response to Satterfield's Rule 60(b) Motion was unnecessary in view of the fact that the Motion merely restated arguments previously rejected by the Court and is wholly without merit. Accordingly, the Court rejects Satterfield's Praecipe to Enter Default.

BY THE COURT:

DuBOIS, JAN E., J.

APPENDIX B

B-1

APS-210 April 21, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **05-1754**

PAUL SATTERFIELD

v.

PHILIP L. JOHNSON, et al.

Appellant

(E.D. Pa. Civ. No. 02-cv-000448)

Present: SLOVITER, NYGAARD AND FUENTES, CIRCUIT JUDGES

Submitted are:

(1) Appellant's motion for bail pending appeal and for permanent release from custody, and supporting affidavit; and

(2) Commonwealth's response

in the above-captioned case.

Respectfully,

Clerk

MMW/EAW/zm/arl

ORDER

The foregoing motion for release or bail pending appeal, is denied. Hilton v. Braunskill, 481 U.S. 770 (1987).

By the Court,

/s/ Richard L. Nygaard
Circuit Judge

Dated: May 18, 2005
ARL/cc: PS; JHB

B-2

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-3108

PAUL SATTERFIELD,

Appellee,

v.

PHILIP L. JOHNSON; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,

Appellants.

Appeal from the United States District Court
for the Eastern District of Pennsylvania,
(D.C. Civ. No. 02-CV-00448)
District Judge: Honorable Jan E. DuBois

Submitted Under Third Circuit LAR 34.1(a)
(September 30, 2005)

Before: ALITO and AMBRO, Circuit Judges,
RESTANI,* Judge

(Filed January 17, 2006)

JUDGMENT

This cause was submitted on the briefs in accordance with Third Circuit LAR 34.1(a) on September 30, 2005.

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* Honorable Jane A. Restani, Chief Judge of the United States Court of International Trade, sitting by designation.

On consideration whereof, it is ORDERED and ADJUDGED that the order of the District Court is REVERSED and the petition for writ of habeas corpus is REMANDED for dismissal in accordance with the opinion of this court.

ATTEST:

Marcia M. Waldron

Clerk

DATED: January 17, 2006

Certified as a true copy and issued in lieu of a formal mandate on 7/14/06

Teste: Marcia M. Waldron
Clerk, U.S. Court of Appeals for the Third Circuit

Reported at
(434 F.3d 185)

B-2

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-3108

PAUL SATTERFIELD,

Appellee,

v.

PHILIP L. JOHNSON; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,

Appellants

Appeal from the United States District Court
for the Eastern District of Pennsylvania,
(D.C. Civ. No. 02-CV-00448)
District Judge: Honorable Jan E. DuBois

Submitted Under Third Circuit LAR 34.1(a)
(September 30, 2005)

Before: ALITO and AMBRO, Circuit Judges,
RESTANI*, Judge

(Filed January 17, 2006)

PAUL SATTERFIELD
Fayette State Correctional Institute
P.O. Box 9999
LaBelle, Pennsylvania 15450

Pro Se

J. HUNTER BENNETT, ESQUIRE
Office of the District Attorney
1421 Arch Street
Philadelphia, Pennsylvania 19102

Attorney for the Appellants

OPINION OF THE COURT

RESTANI, Judge

This appeal arises out of a petition for post-conviction review of a state-court conviction for first-degree murder and

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* Honorable Jane A. Restani, Chief Judge of the United States Court of International Trade, sitting by designation.

possession of an instrument of crime entered against Paul Satterfield in 1985. Appellee, Satterfield, was granted a writ of habeas corpus by Judge Jan E. DuBois of the Eastern District of Pennsylvania on the basis of ineffective assistance of counsel arising from trial counsel's failure to call potentially exculpatory eye-witnesses at trial. Appellants Philip L. Johnson, the District Attorney for Philadelphia County, and the Attorney General of the Commonwealth of Pennsylvania ("The Commonwealth"), challenge the District Court's ruling on ineffective assistance of counsel and also argue that Satterfield's federal habeas petition should have been dismissed as time-barred under the Antiterrorism and Effective Death Penalty Act ("AEDPA"). We agree that Satterfield's petition is time-barred and reverse the judgment of the District Court.

I. FACTUAL BACKGROUND

In April 1983, Satterfield, a repairman, was called to the house of William Bryant to repair a television set. After receiving partial payment, Satterfield attempted but failed to fix Bryant's television set, returning several times without success. Eventually, Bryant demanded a refund of his fee, threatening Satterfield with a baseball bat. Satterfield returned the fee and left.

On April 28, 1983, at about 3:30 in the morning, Bryant was shot to death outside his home. Immediately after the shooting, the police spoke with two eyewitnesses, Eric and

Grady Freeman. Eric Freeman described the shooter as a blonde-haired white male, about five-feet-nine-inches tall, driving a blue station wagon. Grady Freeman described the shooter as a "light-skin guy," about five-feet-eight-inches tall, driving a dark station wagon, but did not specify his hair color or ethnicity. Satterfield is a brown-haired African-American. At that time, the police obtained a warrant to search Satterfield's home, but were unable to obtain sufficient evidence to make an arrest.

In 1984, Satterfield made the acquaintance of Patricia Edwards and her husband, Wayne. Mr. Edwards testified at trial that on May 2, 1984, during a conversation after playing tennis, Satterfield confessed that he murdered Bryant, that he had done so because Bryant threatened him, and that he had disposed of his .44 caliber gun after the murder. That day, Edwards contacted his attorney, who contacted the police on his behalf to report Satterfield's admission. Satterfield contended at trial that Edwards fabricated his confession to punish Satterfield for his alleged romantic advances towards Edwards's wife.

Satterfield's defense consisted of impeaching Edwards's testimony as biased and arguing that a different shooter committed the crime. Defense counsel entered the warrant describing Eric Freeman's police report into the record, but neither Eric nor Grady Freeman testified to their recollection of the crime. Defense counsel declined to call these witnesses out of concern that the perhaps helpful effect of the witnesses'

police statements would be undermined. Counsel's belief was based, at least in part, on the fact that Eric Freeman had identified the shooter as a white male while his brother Grady had identified the shooter as a "light-skin guy," which to counsel meant a light-skinned African-American.

On June 10, 1985, Satterfield was convicted on both counts and sentenced to life in prison.

II. PROCEDURAL HISTORY

The Superior Court affirmed judgment against Satterfield on July 22, 1987. The Pennsylvania Supreme Court denied allocatur on January 27, 1988. On April 1, 1996, Satterfield, acting pro se, filed a petition with the Pennsylvania Supreme Court, entitled "Petition for Writ of Habeas Corpus Ad Subjiciendum – Inter Alia – King's Bench Matter" ("King's Bench Petition"), which was denied on June 7, 1996. On October 11, 1996, the Pennsylvania Supreme Court denied Satterfield's motion to reconsider dismissal of his King's Bench Petition.[2] On January 13, 1997, Satterfield filed a petition for relief pursuant to the Pennsylvania Post Conviction Relief Act

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[2] The Pennsylvania Supreme Court denied the Petition without opinion. We accept as true the uncontested denial date of October 11, 1996. See Satterfield v. Johnson, 218 F. Supp. 2d 715, 716 (E.D. Pa. 2002) [hereinafter Satterfield I].

("PCRA"), 42 Pa. Cons. Stat. § 9541.[3] The PCRA Court denied Satterfield's PCRA petition on September 21, 1998, which the Superior Court affirmed August 22, 2000. The Pennsylvania Supreme Court denied allocatur on April 30, 2001.

On January 23, 2002, Satterfield filed the pro se Petition for Writ of Habeas Corpus that is before us. Magistrate Judge Scuderi initially dismissed the petition as time-barred, but, on September 6, 2002, Judge DuBois remanded for additional consideration of statutory tolling. Judge Dubois ruled that Satterfield's King's Bench Petition was "properly filed" for purposes of tolling the statute of limitations in federal habeas cases under AEDPA, 28 U.S.C. § 2244(d)(2). Satterfield I, 218 F. Supp. 2d at 723.

On May 16, 2003, Magistrate Judge Scuderi issued a Supplemental Report and Recommendation ("Supplemental

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[3] United States Magistrate Judge Peter B. Scuderi initially found that Satterfield's PCRA petition was filed on January 16, 1997. Magistrate Judge Scuderi, in his Supplemental Report and Recommendation, later found that Satterfield's PCRA petition was in fact dated January 9 and filed January 13, 1997, the day Satterfield now alleges he delivered his petition to prison officials for filing. Pennsylvania deems the date a prisoner delivers a pro se petition to prison authorities to be the date of filing under the prison "mailbox rule." Commonwealth v. Jones, 700 A.2d 423, 426 (Pa. 1997).

Report") recommending that Satterfield's claims be denied on their merits. When Satterfield filed no objections, on July 16, 2003, Judge DuBois issued an order adopting the report. See Satterfield v. Johnson, 322 F. Supp. 2d 613, 617 (E.D. Pa. 2004) [hereinafter Satterfield II].

On July 25, 2003, Satterfield filed objections to the Supplemental Report, requesting the opportunity to file out of time, which Judge Dubois eventually granted.[4] On June 21, 2004, Judge DuBois vacated the report and order issued July 16, 2003, holding that Satterfield's defense counsel had been ineffective for failing to interview and call Eric and Grady Freeman, and vacated Satterfield's sentence. Satterfield's remaining claims of actual innocence and absence of notice of charges against him were denied. The mandate was stayed for 180 days to permit Pennsylvania to retry Satterfield. Id. at 616–17.

Both Satterfield and the Commonwealth filed timely notices of appeal from the court's order.

III. JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction to review the District Court's grant

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[4]Judge DuBois initially treated this petition as a motion for reconsideration, but vacated that order, treating it instead as objections filed out of time to the Supplemental Report.

of a writ of habeas corpus under 28 U.S.C. § 2253(a). We exercise plenary review over issues related to statutes of limitations. Merritt v. Blaine, 326 F.3d 157, 161 (3d Cir. 2003). Where the District Court relies entirely on the state court record and does not hold an evidentiary hearing, our review of the District Court's decision is also plenary. Lewis v. Johnson, 359 F.3d 646, 652–53 (3d Cir. 2004).

IV. DISCUSSION

A. THE COMMONWEALTH DID NOT WAIVE THE RIGHT TO ASSERT THAT SATTERFIELD'S FEDERAL HABEAS PETITION IS TIME-BARRED

Satterfield argues that the Commonwealth has failed to appeal the portion of the District Court's order holding that Satterfield's federal habeas petition was not time-barred under AEDPA, and that therefore the Commonwealth has waived any right to assert that his federal habeas petition is time-barred under Federal Rules of Appellate Procedure 3(c)(1)(B) and 4(a)(1)(A). (Appellee's Br. 21.)[5] The Commonwealth's Notice

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[5]The Commonwealth's Notice of Appeal states that:

> Notice is given that [the Commonwealth]. . . hereby appeal[s] to the United States Court of Appeals for the Third Circuit, from that portion of the Order of the Honorable Jan E. DuBois,

of Appeal does not mention any appeal from the portion of the June 21, 2004 order adopting Magistrate Judge Scuderi's Supplemental Report (which held, pursuant to the District Court's remand order of September 6, 2002, that Satterfield's King's Bench Petition was properly filed and therefore tolled under AEDPA's statutory tolling provisions). See 28 U.S.C. § 2244(d)(2).

Had the Commonwealth filed a notice of appeal from the entire order granting collateral relief, the appeal of that final judgment would have "draw[n] into question all prior non-final orders and rulings." MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1092 (3d Cir. 1995) (quoting Drinkwater v. Union Carbide Corp., 904 F.2d 853, 858 (3d Cir. 1990)). The Commonwealth's notice only identified the portion of the District Court's order dealing with ineffective assistance of counsel. Thus, the question is not whether an appeal from a final order implicates all prior non-final orders, but whether an appeal from a portion of a final order determining the merits of

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> granting the Petition for Writ of Habeas Corpus with respect to petitioner's claim that trial counsel was ineffective for failing to call Eric Freeman and Grady Freeman as witnesses at trial and vacating petitioner's conviction, entered in this case on the 23rd day of June, 2004. (Appellants' Addendum to App. at AA.11.)

a federal habeas petition implies an appeal from another portion of that same final order dealing with time-bar under AEDPA.[6]

We interpret the notice requirements of Rules 3 and 4 liberally, exercising appellate jurisdiction over orders not specified in a notice of appeal if: "(1) there is a connection between the specified and unspecified orders; (2) the intention to appeal the unspecified order is apparent; and (3) the opposing party is not prejudiced and has a full opportunity to brief the issues." Polonski v. Trump Taj Mahal Assocs., 137 F.3d 139, 144 (3d Cir. 1998).

The District Court's order adopting the magistrate judge's Supplemental Report regarding statutory tolling was related to the claim for ineffective assistance of counsel because the ineffective assistance of counsel claim could not be reached without disposing of the issue of timeliness. See id. (treating notice of appeal specifying summary judgment order as including appeal of separate order granting attorney's fees); Drinkwater, 904 F.2d at 858 (notice of appeal designating portions of a summary judgment order on sex discrimination claim treated as related to prior order dismissing retaliation count of same complaint).

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[6]The issue of timeliness under AEDPA is not jurisdictional; thus the court is not required to raise the issue if waived by one of the parties. United States v. Bendolph, 409 F.3d 155, 164–165 (3d Cir. 2005).

The Commonwealth's intention to appeal the issue of timeliness was "clearly manifest" from its first brief. The Commonwealth's brief, filed February 7, 2004, devotes thirteen pages to arguing the District Court's ruling on statutory tolling. (Appellants' Br. 14–27.) There is no evidence that the Commonwealth's failure to include its objection to statutory tolling prejudiced Satterfield. He had ample time to prepare a response on the issue of statutory tolling, although he declined to address statutory tolling and argued only the question of equitable tolling in his brief. (Appellee's Br. 21.) Cf. United States v. Bendolph, 409 F.3d at 169 (holding that one-month notice for habeas corpus petitioner to prepare brief on issue of timeliness raised sua sponte is sufficient to avoid prejudice).

B. SATTERFIELD IS NOT ENTITLED TO STATUTORY TOLLING

AEDPA imposes a one-year statute of limitations on all federal habeas claims, subject to tolling for the time a "properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending . . . ." 28 U.S.C. § 2244(d)(2). The one-year statute of limitations on Satterfield's federal habeas petition began to run on AEDPA's effective date, April 24, 1996. Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). Satterfield filed his King's Bench Petition prior to AEDPA's effective date, on April 1, 1996. Assuming for the moment that this petition tolled AEDPA's statute of limitations, Satterfield's time began to run

when the Pennsylvania Supreme Court denied reconsideration of its order dismissing the King's Bench Petition on October 11, 1996. The statute of limitations then ran until January 13, 1997, when Satterfield filed a petition for relief pursuant to the PCRA, which is conceded to have tolled AEDPA's one-year limitation until the petition was finally denied on April 30, 2001. The statute of limitations ran from that date until January 23, 2002, when Satterfield filed his pro se petition for writ of habeas corpus in federal court. If the King's Bench Petition tolled AEDPA's statute of limitations, Satterfield timely filed his federal habeas petition. The timeliness of Satterfield's federal habeas petition therefore hinges on whether his King's Bench Petition was "properly filed" with the Commonwealth.

1. The Meaning of "Conditions to Filing"

In Artuz v. Bennett, 531 U.S. 4 (2000), the Supreme Court held that a petition is properly filed when "its delivery and acceptance are in compliance with the applicable laws and rules governing filings." Id. at 8. A properly filed petition must be in the proper form, and be timely delivered to the proper court or office. Id. The key distinction developed in Artuz is between "condition[s] to filing," which go to the application for post-conviction review, and "condition[s] to obtaining relief," which go to the individual legal claims contained within the application for review. See id. at 11. Failure to satisfy the former prevents a petition from being "properly filed," which in turn prevents application of AEDPA's tolling provision. Failure to satisfy the

latter does not prevent statutory tolling. Artuz, 531 U.S. at 10 ("The statute . . . refers only to 'properly filed' applications . . . .").

Untimely filing, absence of jurisdiction, failure to pay fees, and failure to obtain a requisite certificate of appealability are all examples of flaws going to the application for relief itself. See Pace v. DiGuglielmo, 125 S. Ct. 1807, 1812–13 (2005) (discussing untimely filing and absence of jurisdiction); Artuz 531 U.S. at 8–9 (discussing filing fees and certificates of appealability). These requirements prevent tolling because they "go to the very initiation of a petition and a court's ability to consider that petition . . . ." Pace, 125 S. Ct. at 1814. By contrast, a procedural bar on the relitigation of an issue raised on appeal or a bar on claims that could have been raised on direct appeal are examples of "mandatory state-law procedural requirements" that go to conditions of relief, not conditions of filing. Artuz, 531 U.S. at 8, 11.

The mere fact that a court reviewed an application before dismissing it does not necessarily mean that an application was "properly filed." For example, the Court in Pace made clear that a petition ruled untimely by a state court cannot be "properly filed" even if some judicial review is necessary to determine if the filing condition, or an exception to it, is met. Id. at 1812 (finding timeliness, like "jurisdictional matters and fee payments" to be conditions to filing even though they "often necessitate judicial scrutiny"). If a state court determines that a

petition is untimely, "that would be the end of the matter, regardless of whether it also addressed the merits of the claim, or whether its timeliness ruling was 'entangled' with the merits." Carey v. Saffold, 536 U.S. 214, 226 (2002); see also Pace, 125 S. Ct. at 1813 (consideration by judge of whether petitioner may proceed in forma pauperis does not prevent claim from being dismissed as not "properly filed" for failure to pay filing fees).

2. Satterfield's King's Bench Petition Did Not Meet Certain Conditions to Filing Under Pennsylvania Law

Satterfield appears to concede, while arguing for the application of equitable estoppel, that he "mistakenly asserted his rights in the wrong forum" with respect to his King's Bench Petition. (Appellee's Br. 6, 21.) The District Court likewise found that it was "abundantly clear that the only means of collaterally attacking a conviction is via a PCRA petition." Satterfield I, 218 F. Supp. 2d at 719. We agree that Satterfield's King's Bench Petition was denied for failure to satisfy conditions of filing and therefore was "improperly filed" under Pennsylvania law.

If considered strictly as a petition for habeas corpus, Satterfield's King's Bench Petition was improperly filed under Pennsylvania law. The procedures for filing a petition for post-conviction relief in Pennsylvania are defined by the PCRA.

Commonwealth v. Fahy, 737 A.2d 214, 223 (Pa. 1999) ("[T]he PCRA subsumes the writ of habeas corpus with respect to remedies offered under the PCRA."). It required Satterfield to file three verified copies of the application for post-conviction relief with the court in which he was convicted. Pa. R. Crim. P. 901(B) (2005). Satterfield failed to comply because he filed his King's Bench Petition with the Pennsylvania Supreme Court. The Court in Pace implied that such failures to comply with the PCRA's requirements would prevent statutory tolling. 125 S. Ct. at 1813 (the PCRA's timeliness requirement is "every bit as much a 'condition to filing'" as the requirement that three copies of a PCRA petition be filed "with the clerk of the court in which the defendant was convicted").

The King's Bench Petition, if construed as an application for extraordinary relief, also failed to meet certain conditions of filing. Extraordinary relief may be granted "in any matter pending before any court." 42 Pa. Cons. Stat. Ann. § 726 (2005).[7] Because Satterfield had already been convicted and his

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[7] Section 726 provides:

> Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of

direct appeals exhausted, there was no "pending" matter over which the Pennsylvania Supreme Court could exercise jurisdiction. See In re Assignment of Judge Bernard J. Avellino, 690 A.2d 1138, 1140 (Pa. 1997). The Pennsylvania Supreme Court's lack of jurisdiction goes to the initiation of a petition and its ability to provide relief, and therefore was dismissed for failure to meet a condition of filing. See Pace, 125 S. Ct. at 1812 (finding jurisdictional matters are conditions to filing).

Finally, the fact that the Pennsylvania Supreme Court is vested with the authority to disregard these procedural shortcomings pursuant to its King's Bench powers does not convert Satterfield's improperly filed petition for post-conviction relief into a properly filed petition for purposes of AEDPA. Merely because the Pennsylvania Supreme Court is vested with the authority to exercise its King's Bench powers as it sees fit does not mean that prisoners are therefore granted the power to delay indeterminately AEDPA's statute of limitations by filing King's Bench petitions.[8]

> such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.

[8]While a petition for extraordinary relief is limited to plenary power over cases pending in lower courts, "[t]he 'power of general superintendency over inferior tribunals,' may be exercised where no matter is pending in a lower court." In re Avellino, 690 A.2d at 1140.

The Seventh Circuit addressed a similar situation in Brooks v. Walls, 279 F.3d 518 (7th Cir. 2002). In that case, Illinois law provided that a trial judge could examine whether untimely filing was the result of the petitioner's "culpable negligence" before dismissing. Petitioner Brooks contended that any review of her claim for culpable negligence constituted a consideration of the merits, and therefore her petition was necessarily "properly filed." The Court refused to accept this argument, noting that "[i]f this is so, then almost every collateral attack in Illinois is 'properly filed' for purposes of § 2244(d)(2)." Id. at 521. This was so despite the fact that the trial judge could "cast . . . a sidelong glance at the merits" of a petition before deciding whether to dismiss. Id. Analogizing to the doctrine of independent and adequate state grounds and plain error review, the Court concluded that "[a] state does not abandon the benefits of [the independent and adequate state grounds doctrine] by allowing plain-error review – or by accepting untimely collateral attacks when the standards of plain error have been met." Id. at 524. Thus, the Court refused to treat the inclusion of consideration of "culpable negligence" as rendering untimely filed petitions "properly filed" under AEDPA.

Even if the Pennsylvania Supreme Court's justices took a "sidelong glance" at the merits of Satterfield's petition when deciding whether to exercise their King's Bench powers, we find that this would not excuse the substantial procedural deficiencies in Satterfield's King's Bench Petition. See

Commonwealth v. Fahy, 737 A.2d at 224 ("[I]t goes without saying that this court's King's Bench powers do not constitute a vehicle by which we may circumvent the time requirements of the PCRA to reach the merits of an appeal."); Cf. Stokes v. Vaughn, 132 Fed. App'x 971, 973 (3d Cir. 2005) (non-precedential per curiam) (finding Pennsylvania Supreme Court's dismissal, "without comment," of prisoner's petition for allowance of appeal nunc pro tunc "indicates that it did not accept [petitioner's] petition . . . as properly filed under state law, and thus the pendency of the [petition] did not result in statutory tolling").

We conclude that Satterfield's King's Bench Petition was dismissed for failure to comply with conditions of filing imposed by Pennsylvania law.

3. A Petition For Relief That Is Improperly Filed Under State Law May Not Be Treated As Properly Filed For the Purposes of AEDPA

The remaining question in this case is whether a petition for post-conviction relief, improperly filed under state law, may nonetheless be considered "properly filed" for purposes of AEPDA's tolling statute. We conclude that it may not here.

In Satterfield I, the District Court noted that, at the time, it remained an open question whether the Third Circuit's "flexible approach" to AEDPA's "properly filed" requirement

extended to petitions seeking remedies "not available under Pennsylvania law." 218 F. Supp. 2d at 720–21. Judge DuBois decided the issue in favor of Satterfield, finding that his King's Bench Petition was sufficiently similar to a PCRA petition to count as properly filed. Id. at 721. The District Court's opinion relied on Nara v. Frank, which held that an untimely petition may nonetheless constitute a properly filed application under § 2244(d)(2) so long as it is "akin to an application for state post-conviction or other collateral review." 264 F.3d 310, 316 (3d Cir. 2001) (finding a motion to withdraw a guilty plea nunc pro tunc was sufficiently similar to a PCRA petition to warrant equitable tolling under § 2244(d)). In his opinion, Judge DuBois recognized that the Supreme Court's holding in Carey v. Saffold may have undermined his analysis, but noted that "this determination is one better left to the Third Circuit." Satterfield I, 218 F. Supp. 2d at 722 n.8.

Consistent with Judge DuBois' recognition, we subsequently held that Carey overruled Nara to the extent Nara implied that an untimely petition for state collateral relief may be deemed "properly filed" under AEDPA. Merritt v. Blaine, 326 F.3d 157, 166 (3d Cir. 2003) ("[D]ecisions such as Nara v. Frank . . . to the extent they hold that petitions untimely under state rules nonetheless may be deemed properly filed, were wrongly decided.").

An untimely state petition for post-conviction relief cannot be "properly filed" for purposes of § 2244(d)(2).

Pace, 125 S. Ct. at 1811. The Court expressed particular concern that allowing untimely state applications for post-conviction relief to toll AEDPA would transform AEDPA's statute of limitations into "a de facto extension mechanism." Id. at 1812.

Although Pace and Merritt dealt specifically with cases involving untimely state-law petitions for post-conviction review, we find that the logic of those cases applies to cases such as this, where the state petition is improperly filed for reasons other than timeliness. See Brown v. Shannon, 322 F.3d 768, 776 n.5 (3d Cir. 2003) ("Pennsylvania law . . . did not (and does not) recognize extra-PCRA petitions like Brown's notice of appeal nunc pro tunc. Because such petitions are improperly filed as a matter of state law, it seems doubtful that they may be deemed 'properly filed' within the meaning of § 2244(d).").

A rule allowing prisoners to toll AEDPA's statute of limitations by filing applications not conforming with state law would undermine the purpose of AEDPA. Petitioners could, with the exercise of some creativity, deliberately delay the onset of AEDPA's statute of limitations by filing numerous petitions "akin" to legitimate state-law petitions for post-conviction relief – creating just the "de facto extension mechanism" feared by the Supreme Court in Pace. Other circuits have arrived at similar conclusions. See, e.g., Sibley v. Culliver, 377 F.3d 1196, 1202–04 (11th Cir. 2004) (assuming petition filed with Florida Supreme Court to be a petition for collateral review, refusing to toll statute in part because petition was not "properly filed" for

failure to comply with Alabama laws governing the location and form of filing); Adeline v. Stinson, 206 F.3d 249, 253 (2d Cir. 2000) ("[T]he filing of creative, unrecognized motions for leave to appeal" does not trigger tolling pursuant to § 2244(d)(2)).

Where state law mandates that petitions for collateral relief be resolved through a unified system in a definite period, a practice of accepting non-conforming petitions as "properly-filed" for the purposes of AEDPA would encourage prisoners to abuse state post-conviction procedures, undermining the finality of state-law judgments. This is exactly what AEDPA was designed to prevent. Carey, 536 U.S. at 220 ("The exhaustion requirement serves AEDPA's goal of promoting comity, finality, and federalism.") (citation omitted); Duncan v. Walker, 533 U.S. 167, 178 (2001) (AEDPA's purpose is not only to further the interests of comity and federalism, but also to further finality of convictions).

We conclude that Satterfield's King's Bench Petition was not "properly filed" for purposes of § 2244(d)(2) and therefore did not toll AEDPA's one-year statute of limitations. Thus, Satterfield's federal habeas petition should be dismissed as time-barred unless equitable principles warrant tolling of the statute of limitations.

C. Satterfield Has Not Demonstrated Diligence and Extraordinary Circumstances Justifying Equitable Tolling of AEDPA's Statute of Limitations

Having failed to meet AEDPA's one-year statute of limitations, Satterfield's petition can only be saved by application of the doctrine of equitable tolling. Equitable tolling is available "'only when the principle of equity would make the rigid application of a limitation period unfair.'" Merritt, 326 F.3d at 168 (quoting Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001)). A petitioner seeking equitable tolling bears the burden to show that he diligently pursued his rights and that some "extraordinary circumstance stood in his way." Pace, 125 S. Ct. at 1814.

Equitable tolling may be had if: "(1) the defendant has actively misled the plaintiff; (2) if the plaintiff has in some extraordinary way been prevented from asserting his rights; or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." Fahy v. Horn, 240 F.3d at 244 (citing Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999)). There are no allegations that the Commonwealth misled Satterfield regarding his claim. Therefore equitable tolling must be justified either because of extraordinary circumstances or a timely assertion of rights in the wrong court.

Satterfield alleges "extraordinary circumstances" in the form of a prison riot that deprived him of his legal materials in 1989. He concedes, however, that the materials were replaced by May 4, 1995, almost a full year before the AEDPA statute of limitations went into effect on his claim. (Appellee's Br. 22.) Where a petitioner is ultimately able to file his habeas petition,

with or without having received replacement materials, the deprivation of legal documents does not justify equitable tolling. See Brown, 322 F.3d at 773 (failure of attorney to obtain a complete set of trial transcripts not an "extraordinary circumstance[]" justifying equitable tolling).

Equitable tolling may also apply if Satterfield's improperly filed King's Bench Petition constitutes a timely application for relief in the wrong forum. Jones v. Morton, 195 F.3d at 159. The Commonwealth claims that the "wrong forum" test does not toll the federal habeas deadline on the basis of a state collateral-relief petition filed with the wrong state court. (Appellants' Reply Br. 2–3.) The Commonwealth is correct that cases interpreting the "wrong forum" element of Jones v. Morton usually refer to a peremptory filing in federal court prior to exhaustion of state-law claims. See Pace 125 S. Ct. at 1813 (noting the right of a petitioner to file a "protective petition" in federal court to guard against AEDPA's statute of limitations). Because Satterfield has failed to exercise reasonable diligence in the pursuit of his claims, we do not decide whether a petitioner who files a state-law petition in the wrong state court may invoke the doctrine of equitable tolling for filing in the "wrong forum."

Even if Satterfield's filing in the wrong court constituted an extraordinary circumstance, he would not be eligible for equitable tolling because of his lack of diligence in pursuing his petition. The record shows that Satterfield waited nearly a year

to initiate the process of petitioning for post-conviction relief alleging ineffective assistance of counsel after receiving replacement legal materials. Following dismissal of his PCRA petition, he waited more than eight months to file his habeas petition in federal court. Such a delay demonstrates that Satterfield did not diligently pursue available routes to collateral relief. Pace, 125 S. Ct. at 1815 (The "lack of diligence precludes equity's operation" where petitioner waited years to bring first post-conviction claim, and over five months after denial of state post-conviction relief to pursue federal habeas corpus).

V. CONCLUSION

For the foregoing reasons, the order of the District Court granting Appellee's petition for habeas corpus is REVERSED and the petition is ordered REMANDED for dismissal in accordance with this opinion.

B-3

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

June 29, 2006

No. 04-3108

PAUL SATTERFIELD

v.

PHILIP L. JOHNSON, et al., Appellant

(U.S. District Court for the Eastern District of PA: No. 02-cv-00448)

Present: **AMBRO, Circuit Judge, and RESTANI, Judge of International Trade**

Motion by Appellee, Paul Satterfield,\ to Vacate/Void Judgment.

Opinion filed: 01/17/06
Mandate issued: 04/14/06

/s/ Aina R. Laws
Case Manager 267-299-4957

ORDER

The foregoing motion by Appellee, Paul Satterfield to Vacate/Void Judgement is denied.

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: July 13, 2006

ARL/cc: JHB; PS

B-4

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

July 13, 2010
*Amended: August 6, 2010

No. 04-3108

PAUL SATTERFIELD

v.

PHILIP L. JOHNSON, et al., Appellant

(E.D. Pa. No. 02-cv-00448)

Present: AMBRO, FUENTES and SMITH, Circuit Judges

1. Motion by Appellee, Paul Satterfield, to Recall Mandate, with Appendix in Support thereof.

2. Motion by Appellee, Paul Satterfield, for Immediate Enforcement of Writ of Habeas Corpus Pending Disposition of Appellee's Motion to Recall the Mandate.

Opinion filed: 01/17/06
Mandate issued: 04/14/06
Any Response due 7/12/10 has not been received.

/s/ Aina R. Laws
Case Manager 267-299-4957

ORDER

The foregoing motions are DENIED.

By the Court,

/s/ Julio M. Fuentes
Circuit Judge

Dated: August 12, 2010

ARL/cc: JHB; PS

GLD-120

February 16, 2012

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **12-1108**

IN RE: PAUL SATTERFIELD,
Petitioner

(Related to E.D. Pa. Civ. No. 2:02-cv-00448)

Present: FUENTES, GREENAWAY, JR. and NYGAARD, Circuit Judges

Submitted are:

(1) Petitioner's "Petition En Banc for a Writ of Error Coram Nobis";

(2) Letter from Petitioner construed as a motion for "omnibus relief"; and

(3) Letter from Petitioner construed as a motion to expedite and for immediate release from custody pending disposition of this matter in the above-captioned case.

Respectfully,

Clerk

MMW/TWC/tnh

ORDER

The foregoing petition, which principally seeks to challenge our January 17, 2006 decision issued in Petitioner's 28 U.S.C. § 2254 proceedings, see Satterfield v. Johnson, 434 F.3d 185 (3d Cir. 2006), is denied. "Coram nobis is an extraordinary remedy that has traditionally been used to attack federal convictions with continuing consequences when the petitioner is no longer in custody for purposes of 28 U.S.C. § 2255." United States v. Rhines, 640 F.3d 69, 71 (3d Cir. 2011) (per curiam) (internal quotation marks and citation omitted). That remedy is clearly inapplicable here, for Petitioner, a state prisoner, has not been released from custody and is not attacking a federal conviction. We note that Petitioner has already sought en banc rehearing of our January 17, 2006 decision, as well as moved to recall the mandate that followed that decision. Both of those requests were denied. To the extent the instant petition could be construed as

seeking coram nobis relief with respect to his underlying state court proceedings, he may not pursue that relief in federal court. See Obado v. New Jersey, 328 F.3d 716, 718 (3d Cir. 2003) (per curiam). Since the petition is wholly without merit, we decline to refer it to the Court en banc. The various relief sought in Petitioner's two motions accompanying the instant petition is denied.

By the Court,

/s/ Richard L. Nygaard
Circuit Judge

Dated: March 9, 2012

Tnh/cc: Paul Satterfield
Thomas W. Dolgenos, Esq.

A True Copy:

Marcia M. Waldron

Marcia M. Waldron, Clerk

B-6

DLD-011

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-3176

PAUL SATTERFIELD,
Appellant

v.

DISTRICT ATTORNEY PHILADELPHIA;
ATTORNEY GENERAL PENNSYLVANIA;
SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 2-02-cv-00448)
District Judge: Honorable Jan E. Dubois

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
October 13, 2016
Before: CHAGARES, VANASKIE and KRAUSE, Circuit Judges

JUDGMENT

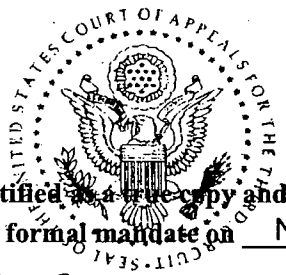
This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on October 13, 2016. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered July 6, 2016, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/Marcia M. Waldron
Clerk

DATED: October 26, 2016



Certified as a true copy and issued in lieu of a formal mandate on November 17, 2016

Teste: Marcia M. Waldron

Clerk, U.S. Court of Appeals for the Third Circuit

DLD-011 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-3176

PAUL SATTERFIELD,
Appellant

v.

DISTRICT ATTORNEY PHILADELPHIA;
ATTORNEY GENERAL PENNSYLVANIA;
SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 2-02-cv-00448)
District Judge: Honorable Jan E. Dubois

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
October 13, 2016
Before: CHAGARES, VANASKIE and KRAUSE, Circuit Judges

(Opinion filed: October 26, 2016)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Paul Satterfield is serving a life sentence, imposed in 1985 pursuant to a state-court murder conviction. The District Court granted Satterfield's January 2002 petition for a writ of habeas corpus, but we reversed on appeal and remanded with instructions to dismiss the petition as time-barred. Satterfield v. Johnson, 434 F.3d 185 (3d Cir. 2006). The District Court then dismissed Satterfield's petition by order dated April 19, 2006.

Years later, Satterfield, invoking the rule from McQuiggin v. Perkins, 133 S. Ct. 1924 (2013), moved under Fed. R. Civ. P. 60(b) to vacate the April 19, 2006 judgment of dismissal. The District Court denied relief. We granted Satterfield a certificate of appealability ("COA"), and that appeal is pending. See CA No. 15-2190.

In 2016, Satterfield filed in the District Court a pro se motion under Fed. R. App. P. 10(e).[1] He primarily argued that the form used to draft his January 2002 habeas petition was supplied by the District Court (see ECF No. 2) and contained pre-printed text requiring, in error, identification of a district attorney's office ("the DA") as a party-respondent (see ECF No. 3).[2] Satterfield argued that only his jailor and the local Attorney General were proper respondents, see Habeas Corpus Rule 2(a), yet the DA was

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[1] Fed. R. App. P. 10(e) "authorizes the district court to augment the record in two situations: (1) when the parties dispute whether the record truly discloses what occurred in the district court, or (2) when a material matter is omitted by error or accident. All other questions on the form and content of the record are to be presented to the court of appeals." Fassett v. Delta Kappa Epsilon, 807 F.2d 1150, 1165 (3d Cir. 1986).

[2] Satterfield also argued that the docket failed to reflect the date when his habeas petition was served on the other respondents.

added as a party and the caption was amended to reflect as much (see ECF No. 5). Satterfield requested that the District Court excise the DA's appearance from the record.

The District Court denied Satterfield's motion to correct the record on appeal, concluding that it had previously rejected his request to, in effect, erase the DA from the history of the habeas case. See ECF No. 96 (District Court's April 15, 2015 memorandum order), p. 3 n.3 ("The District Attorney was lawfully added as a party to this action by Order dated April 9, 2002, and thus had standing to pursue an appeal."). Satterfield timely appealed.

We exercise jurisdiction under 28 U.S.C. § 1291. "When a district court settles a dispute about what occurred in proceedings before it, the court's determination is conclusive unless intentionally false or plainly unreasonable." United States v. Hernandez, 227 F.3d 686, 695 (6th Cir. 2000); accord United States v. Graham, 711 F.3d 445, 452 (4th Cir. 2013). We may affirm on any ground supported by the record. See Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999).

We will summarily affirm the District Court's judgment because this appeal presents no substantial question. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6. The District Court correctly observed that Satterfield's challenge to the party-respondent status of the DA was previously raised (see ECF No. 94) and rejected (see ECF No. 96). Indeed, we, too, have rejected Satterfield's attempts to invalidate the DA's participation in his habeas proceedings. See CA No. 15-2190 (3d Cir. Oct. 7, 2015) (denying peripheral motions). In any event, we perceive no flaws in the record on appeal to this Court—in CA Nos. 04-

3066, 04-3108 or 15-2190—of the sort complained of by Satterfield and which resulted from "error or accident." Fed. R. App. P. 10(e)(2); cf. Marron v. Atlantic Refining Co., 176 F.2d 313, 315 (3d Cir. 1949).

The District Court's judgment will, therefore, be summarily affirmed. Satterfield's motions for a COA, to expand the COA in CA No. 15-2190, and for expedited adjudication are denied as unnecessary, improper, and moot, respectively.

B-7

OFFICE OF THE CLERK

MARCIA M. WALDRON

CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

April 19, 2017

Mr. Paul Satterfield
Fayette SCI
P.O. Box 9999
LaBelle, PA 15450

RE: Satterfield v. Johnson
C.A. No. 04-3108

Dear Mr. Satterfield:

This will acknowledge receipt on April 17, 2017, of your letter to accept the original of Appellee's Petition for Leave to Seek Relief from a Void Judgment from a Prior Term on the Ground of Being Contrary to Marbury v. Madison, 5 U.S. 137 (1803). No action may be taken on request and it is returned to you.

The mandate in this matter was entered on April 14, 2006, finalizing this Court's decision. A motion to recall the mandate was filed on July 8, 2010, and denied on August 12, 2010. No further submissions will be considered. Any further review must be sought in the United States Supreme Court. This office will not continue to respond to documents and inquiries submitted in this matter.

Very truly yours,

Marcia M. Waldron

Marcia M. Waldron, Clerk

MMW/mb
Enclosure

B-8

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD : CIVIL ACTION

v. :

PHILIP L. JOHNSON, ET AL. : NO. 02-448

O R D E R

AND NOW, this 9th day of April, 2002, upon consideration of Relator's Petition for a Writ of Habeas Corpus, IT IS ORDERED that:

1. The District Attorney of PHILADELPHIA is added as a party respondent and the caption is hereby so amended.

2. The District Attorney shall file specific and detailed Answers within thirty (30) days of the date of this order pursuant to Rule 5, 28 U.S.C. fol. § 2254.[1]

BY THE COURT:

PETER B. SCUDERI
U.S. MAGISTRATE JUDGE

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1. Upon review of Relator's petition, it appears that the petition may be subject to the one-year limitation period found at 28 U.S.C. Section 2244(d)(1). As a result, Respondents are directed to address the applicability of the one-year limitations period and any equitable considerations thereto. We note, however, that compliance with this Order in no way excludes or restricts Respondents from filing a full and complete Answer applying all relevant legal theories and defenses. If, indeed, an Answer on the merits of Relator's claims is deemed necessary, please note in ¶ 2 that the court **requires** an Answer to be **specific** and **detailed** as to Relator's claims.

B-9

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD,	:	
	:	
Petitioner,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
PHILIP L. JOHNSON; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; and THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,	:	**NO. 02-0448**
	:	
Respondents.	:	

DuBOIS, J. **September 6, 2002**

MEMORANDUM

I. INTRODUCTION

Petitioner, Paul Satterfield, is a state prisoner currently serving a life sentence at the State Correctional Institution, Pittsburgh, Pennsylvania. His sentence arises out of a June 10, 1985, conviction for first-degree murder and possession of an instrument of crime. On January 23, 2002, petitioner filed a pro se Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. (Document No. 1). [1] On March 25, 2002, this Court referred the petition to United States Magistrate Judge Peter B. Scuderi. After respondents filed a response to the petition, on May 29, 2002, Judge Scuderi issued a Report and Recommendation (Document

[1] Under the "prison mailbox rule," the petition is considered as having been filed on the date petitioner gave the petition to prison authorities for mailing. Burns v. Morton, 134 F.3d 109, 112-13 (3d Cir. 1998). Thus, the Court considers the petition filed as of January 23, 2002, the date on which petitioner submitted it for mailing, rather than the date on which it was actually filed with the Court, January 28, 2002.

No. 8, filed May 29, 2002) ("R & R") recommending that the petition be dismissed on the ground that it was filed beyond the one-year statute of limitations under 28 U.S.C. § 2244(d).

Presently before the Court are Petitioner's Objections to Magistrate Judge's Report and Recommendation (Document No. 11, filed June 14, 2002). In that filing, petitioner states a number of objections to Judge Scuderi's Report and Recommendation, most relevant of which are those pertaining to the timeliness of the petition under § 2244(d). Upon review of the objections relating to timeliness, the Court reaches a different conclusion than Judge Scuderi with respect to statutory tolling under § 2244(d). This conclusion will require further analysis as to the timeliness of the habeas petition. Accordingly, the Court will sustain petitioner's objections as to statutory tolling, and remand the petition to Judge Scuderi for further consideration and submission of a supplemental report and recommendation. Petitioner's remaining objections will be overruled without prejudice.

II. PROCEDURAL HISTORY

Petitioner appealed his June 10, 1985, conviction and his life sentence to the Pennsylvania Superior Court, which affirmed the conviction and sentence on July 22, 1987. Commonwealth v. Satterfield, 531 A.2d 528 (Pa. Super. Ct. 1987) (table). Petitioner then filed a petition for allowance of appeal with the Supreme Court of Pennsylvania, and the petition was denied on January 27, 1988. Commonwealth v. Satterfield, 539 A.2d 811 (Pa. 1988) (table).

On April 1, 1996, petitioner filed a "Petition for Writ of Habeas Corpus Ad Subjiciendum – Inter Alia – King's Bench Matter" in the Supreme Court of Pennsylvania. That court denied the

petition on June 7, 1996,[2] and, thereafter, on October 11, 1996, denied petitioner's petition for reconsideration.[3]

Some time between January 13, 1997 and January 16, 1997,[4] petitioner filed a pro se petition attacking his conviction under Pennsylvania's Post Conviction Relief Act, 42 Pa. C.S.A. § 9541 et seq. ("PCRA"). After counsel was appointed, petitioner requested that he be permitted to proceed pro se, which request the PCRA court granted. Thereafter, on September 21, 1998, the Court of Common Pleas denied petitioner's pro se petition. The Superior Court affirmed that ruling on August 22, 2000. Commonwealth v. Satterfield, 764 A.2d 1128 (Pa. Super. Ct. 2000) (table). The Supreme Court of Pennsylvania denied petitioner's petition for allowance of appeal on April 30, 2001. Commonwealth v. Satterfield, 775 A.2d 805 (Pa. 2001) (table). Petitioner then filed the instant § 2254 petition on January 23, 2002.

III. DISCUSSION

A. RELEVANT STATUTE OF LIMITATIONS

The instant petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which codified a one-year statute of limitations for actions brought under 28 U.S.C. § 2254. See 28 U.S.C. § 2244(d)(1). Unless one of three exceptions apply, see 28 U.S.C. § 2244(d)(1)(B)-(D), the statute runs from "the date on which the judgment became final by the

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[2] The Supreme Court of Pennsylvania's denial of the "Petition for Writ of Habeas Corpus Ad Subjiciendum – Inter Alia – King's Bench Matter" is not reported. Respondents do not, however, challenge the date of the denial.

[3] Respondents state that they have no record of this denial. They do not, however, contest the fact that the petition for reconsideration was filed.

[4] As discussed below, the date on which the PCRA petition was filed is the subject of one of petitioner's objections.

conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A). In this case, that would mean that the one-year statute began to run ninety days after January 27, 1988, the final date on which petitioner could have petitioned for certiorari after the Supreme Court of Pennsylvania declined consideration of petitioner's direct appeal. The Third Circuit has decided, however, that, for a petitioner whose conviction became final before AEDPA's enactment, the one-year statute of limitations is treated as running from the date of that enactment, April 24, 1996. Burns v. Morton, 134 F.3d 109, 111-12 (3d Cir.1998); see also Morris v. Horn, 187 F.3d 333, 337 (3d Cir. 1999).

Without any tolling of the statute, petitioner would be barred from filing a habeas petition after April 23, 1997. AEDPA further provides, however, that the statute should be tolled 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." 28 U.S.C. § 2244(d)(2). In this case, petitioner filed two state-court actions, the "Petition for Writ of Habeas Corpus Ad Subjiciendum – Inter Alia – King's Bench Matter" filed on April 1, 1996 (hereinafter, "the King's Bench petition"), and the PCRA action filed in January 1997. A threshold question for assessing the timeliness of the instant habeas petition is whether these state-court actions constitute "properly filed application[s] for State post-conviction or other collateral review" under § 2244(d)(2) such that the AEDPA statute of limitations would be tolled for the time period during which they were pending.

B. THE REPORT AND RECOMMENDATION: CALCULATION OF PETITIONER'S FILING DEADLINE UNDER AEDPA

Judge Scuderi, in addressing the effect of petitioner's state-court petitions, concluded that

the King's Bench petition was not a properly filed state collateral attack. He did so on the ground that petitioner's King's Bench petition "essentially sought a remedy that was not available under Pennsylvania law." R & R at 5-6. The remedy was not available, Judge Scuderi explained, because the PCRA explicitly states that a PCRA petition "shall be the sole means of obtaining collateral relief" and that the PCRA "encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect including habeas corpus and coram nobis." 42 Pa. C.S.A. § 9542. Likewise, the remedy was not available because, "under state law, the authority to hear a collateral appeal lies with the Pennsylvania Court of Common Pleas and not the Supreme Court." R & R at 6 (citing 42 Pa. C.S.A. § 9545(a)). Because the remedy petitioner sought in the King's Bench petition was not available under Pennsylvania law, Judge Scuderi concluded that the petition was not "properly filed" under § 2244(d)(2), and, accordingly, that it did not toll the AEDPA statute of limitations.

Additionally, Judge Scuderi determined that, because the King's Bench petition was not properly filed, petitioner's petition for reconsideration of the Supreme Court of Pennsylvania's dismissal of the King's Bench petition could not be viewed as "properly filed." In doing so, Judge Scuderi also noted Pa. R. App. P. 3309, which governs King's Bench matters and does not explicitly permit petitions for reconsideration. That determination by Judge Scuderi led him to conclude that the AEDPA statute of limitations was not tolled while the petition for reconsideration was pending.

Judge Scuderi did, however, determine that the PCRA petition was "properly filed" under § 2244(d)(2). Thus, he concluded, the AEDPA statute of limitations was tolled during the pendency of that petition – from January 16, 1997, the date Judge Scuderi adopted as the date

petitioner filed the PCRA petition, through April 30, 2001, when the Supreme Court of Pennsylvania denied the petition for allowance of appeal.

Based on this analysis, Judge Scuderi calculated petitioner's deadline for filing a federal habeas petition, as follows. The statute began to run on April 24, 1996, the date AEDPA was enacted. It ran for 268 days until January 16, 1997, when petitioner filed his PCRA petition, tolling the statute of limitations under § 2244(d)(2). The statute then began to run again at the end of the tolling period, on April 30, 2001, the date on which the Supreme Court of Pennsylvania denied petitioner's petition for allowance of appeal. It expired 97 days later, on August 5, 2001. Because petitioner filed the § 2254 petition more than five months later, on January 22, 2002, Judge Scuderi concluded the petition was time barred.

C. PETITIONER'S OBJECTIONS

In his objections, petitioner argues, inter alia, that his King's Bench petition and petition for reconsideration with respect to the King's Bench petition, should be considered as "properly filed" under § 2244(d)(2). Should the King's Bench petition and petition for reconsideration be viewed as tolling the limitations period under § 2244(d)(2), the AEDPA statute of limitations would not have run from April 24, 1996; instead, it would have run from October 11, 1996, the date the petition for reconsideration was denied. Assuming, arguendo, that petitioner filed his PCRA petition on January 16, 1997, the date Judge Scuderi adopted, the statute would have run for 98 days until that date. The running of the statute would then have tolled until the conclusion of the PCRA proceedings on April 30, 2001. From that date, petitioner had 267 days to file his habeas petition, or until January 21, 2002. Thus, assuming that the King's Bench petition and the petition for reconsideration were "properly filed," petitioner's filing of the § 2254 petition on

January 23, 2002, would have been untimely by two days.

However, petitioner's additional objection as to the date on which his PCRA petition was filed, if sustained, would render his habeas petition timely. Specifically, petitioner objects to Judge Scuderi's adoption of January 16, 1997, as the date on which the PCRA petition was filed, and argues that the petition was actually filed, under the prison mailbox rule,[5] on January 13, 1997, when he gave the PCRA petition to prison authorities for mailing. Should the Court adopt January 13, 1997, as the date on which the PCRA petition was filed, petitioner's filing deadline would be extended by three days, and January 23, 2002, the date on which he filed, would have been the next to last day of the one-year statutory period.

D. ANALYSIS OF PETITIONER'S OBJECTIONS

The Court must resolve two issues: (1) the date on which the PCRA petition was filed and (2) whether the King's Bench petition and the subsequent petition for reconsideration constitute "properly filed application[s] for State post-conviction or other collateral review" under § 2244(d)(2). The Court addresses these issues in reverse order.

1. Tolling During Pendency of King's Bench Petition and Petition for Reconsideration

At the outset, the Court notes its agreement with Judge Scuderi that, in filing the King's Bench petition and the subsequent petition for reconsideration, petitioner was seeking "a remedy that was not available under Pennsylvania law." R & R at 5-6. Pennsylvania law is abundantly clear that the only means of collaterally attacking a conviction is via a PCRA petition. See 42 Pa. C.S.A. § 9542. It is not so clear, however, that the unavailability of a remedy sought in a state-

[5] The "prison mailbox rule," see supra note 1, applies in Pennsylvania. Commonwealth v. Jones, 700 A.2d 423, 426 (Pa. 1997).

court petition removes the petition from the realm of "properly filed" state collateral attacks.

This Court discussed this issue in its recent decision, Washington v. Byrd, No. 00-6389, 2002 WL 461729, at *4-6 (E.D. Pa. March 22, 2002).[6] In Washington, the petitioner had filed a state-court habeas corpus petition, as opposed to a PCRA petition. The Superior Court dismissed the petition on the ground that the writ of habeas corpus had been subsumed by the PCRA. Id. at *2. In this Court, petitioner argued that the state habeas petition was "properly filed" and tolled the AEDPA statute of limitations. This Court addressed the issue, but, because the question was not necessary to a decision in Washington, the Court did not rule on it. However, the Court's analysis of the issue in Washington is equally applicable to this case; the Court therefore sets forth an adaptation of its analysis from Washington:

The Superior Court's grounds for dismissing the habeas corpus petition at issue in Washington – that the petitioner's requested remedy of habeas corpus was subsumed by the statutory PCRA remedy – might suggest that the petitioner's action was not "properly filed" because it sought a remedy that was unavailable under Pennsylvania law. The Third Circuit, however, has adopted a "flexible approach" in determining whether an action is in fact properly filed. Nara v. Frank, 264 F.3d 310, 315 (3d Cir. 2001). Specifically, the Third Circuit has held that § 2244(d)(2) "covers 'various forms of state review,'" id. (quoting Jones v. Morton, 195 F.3d 153, 159 (3d Cir. 1999)), and it has "rejected 'the notion that a meritless PCRA petition cannot constitute a "properly filed application" under § 2244(d)(2).'" Id. (quoting Lovasz v.

[6] The Third Circuit denied a request for a certificate of appealability in Washington on August 22, 2002, and "[f]or substantially the reasons set forth in [this Court's] opinion," ruled that the petition was barred by the statute of limitations. Washington v. Byrd, No. 02-2136, slip op. (3d Cir. Aug. 22, 2002).

Vaughn, 134 F.3d 146, 149 (3d Cir. 1998)). This approach draws support from a recent Supreme Court decision where "[t]he Court stated that 'an application is "properly filed" when its delivery and acceptance are in compliance with the applicable laws and rules governing filings. These usually prescribe, for example, the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee.'" Id. at 316 (quoting Artuz v. Bennett, 531 U.S. 4, 8 (2000)).

In light of these principles, the Third Circuit concluded in Nara that a state-court motion to withdraw a guilty plea nunc pro tunc eleven years after conviction was "akin to an application for state post-conviction or other collateral review" and "properly filed" for tolling purposes under § 2244(d)(2). Id. at 316. The cases on which the Third Circuit relied in Nara further demonstrate the flexibility of the "properly filed" inquiry. See, e.g., Artuz, 531 U.S. at 7-8 (holding that statute of limitations was tolled while state court was considering prisoner's motion to vacate conviction even though motion was procedurally barred under state law); Dictado v. Ducharme, 244 F.3d 724 (9th Cir. 2001) (holding state court actions characterized as "repetitive and untimely" were "properly filed"); Villegas v. Johnson, 184 F.3d 467, 469-70 (5th Cir. 1999) (holding that petition dismissed by state court as successive or an abuse of the writ was "properly filed"); Lovasz, 134 F.3d at 148-49 (holding second or successive PCRA petition tolled statute of limitations). Further, since Nara, Chief Judge Giles and Judge Shapiro of this Court have held that PCRA petitions untimely filed under Pennsylvania law are nonetheless "properly filed" and toll the AEDPA statute of limitations. See Pace v. Vaughn, 2002 WL 485689, at *5 (E.D. Pa. March 29, 2002) (Giles, C.J.); Rosado v. Vaughn, 2001 WL 1667575, at *3 (E.D. Pa. Dec. 28, 2001) (Shapiro, J.); Cooper v. Vaughn, 2001 WL 1382493, at *3-4 (E.D. Pa. Nov. 6, 2001)

(Shapiro, J.).

The petition at issue in Washington presented a different question than that presented in the above-cited cases. As opposed to submitting an untimely or second/successive collateral attack as did the petitioners in the above-cited cases, the petitioner in Washington, in his state habeas corpus action, essentially sought a remedy not available under Pennsylvania law. It is not clear from the above cases whether the Third Circuit's "flexible approach" would include such an action within the realm of "properly filed" collateral attacks, and the matter is further complicated by the fact that Pennsylvania courts have, in some cases, characterized pro se petitions for habeas corpus relief as PCRA petitions. See Commonwealth v. Weimer, 756 A.2d 684, 685 (Pa. Super. Ct. 2000) (citing Commonwealth v. DiVentura, 734 A.2d 397, 398 (Pa. Super. Ct. 1999)). Thus, some courts might characterize the petitioner's state-court habeas action as a second or successive PCRA petition. If so construed, following the Third Circuit's ruling in Lovasz, such an action would be "properly filed"; moreover, even if the action were not timely filed under Pennsylvania law, it might still be viewed as "properly filed" under Pace, Rosado, and Cooper.[7]

The above stated issue in Washington, not necessary to a decision in that case, is necessary to a decision in the instant case. The Court must therefore decide the question it left open in Washington.

The Court concludes that, in this case, petitioner's King's Bench petition and petition for

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[7] Even if the Court were to have characterized the petitioner's state court habeas action as "frivolous" – which it may well have been – that would not have been fatal to the tolling claim. See Lovasz, 134 F.3d at 149 (refusing to read into "properly filed" provision "any requirement that the application be non- frivolous"); but cf. United States ex rel. Belmore v. Page, 104 F. Supp. 2d 943, 945-46 (N.D. Ill. 2000) (holding that petitioner's filing of state court habeas corpus action was seeking a "totally unavailable remedy" that "must be viewed as legally frivolous" and could not, therefore, be viewed as "properly filed").

reconsideration, though seeking remedies unavailable under Pennsylvania file, do constitute "a properly filed application for State post-conviction or other collateral review." The Court reaches this conclusion in light of the above-cited precedents, all of which counsel in favor of broadly construing the "properly filed" language of § 2244(d)(2).[8] Most relevant is the Third Circuit's

[8] In reaching this conclusion, the Court acknowledges that the Supreme Court's recent decision in Carey v. Saffold, 122 S. Ct. 2134 (2002), might be read to somewhat narrow the construction of what constitutes a "properly filed" state petition. In Saffold, the Court considered the tolling effect of a petition filed in California's unique collateral review system, which does not "technically" require appellate review of lower court determinations. Id. at 2139. Specifically, the Court considered whether a petition was "pending" under § 2244(d)(2) during the time between a lower court's dismissal of the petition and the petitioner's filing of a new petition in an appellate court. Id. at 2137-41. After concluding that the petition was pending during this time period, the Court remanded to the Ninth Circuit for a determination as to the timeliness of the state petition. Id. at 2141.

The Court's remand in Saffold might suggest that the timeliness of a state petition is dispositive of the "properly filed" issue. See id. at 2141 (stating that if the California Supreme Court had found delay in filing petition "unreasonable," and, therefore, under California law, untimely, "that would end the matter, regardless of whether [that court] also addressed the merits of the claim"); see also id. at 2146 (Kennedy, J., dissenting) (citing Artuz, 531 U.S. at 8) ("If the California court held that all of respondent's state habeas petitions were years overdue, then they were not 'properly filed' at all, and there would be no tolling of the federal limitations period.").

One court to have addressed the impact of Saffold, the Seventh Circuit, has read that decision to have the effect of removing untimely filed state petitions from the coverage of "properly filed" in § 2244(d)(2). Brooks v. Walls, – F.3d –, 2002 WL 1949693, at *2 (7th Cir. Aug. 23, 2002) ("Saffold tells us (ending any ambiguity left by Artuz) that to be "properly filed" an application for collateral review in state court must satisfy the state's timeliness requirements."). In light of this reading, the Seventh Circuit concluded that appellate decisions, including the Third Circuit's ruling in Nara, "to the extent they hold that petitions untimely under state rules nonetheless may be deemed 'properly filed,' were wrongly decided." Id.

This Court, however, does not deem it appropriate to decide whether Nara – and District Court opinions following it – have in fact been undermined by Saffold. In the first instance, Saffold may be subject to a more narrow reading, in that it was only addressing the term "pending" in § 2244(d)(2) as it applied to California's unique collateral review system. See Saffold, 122 S. Ct. at 2141 (stating that if California Supreme Court found petition untimely filed, then, under California's system, petition "would no longer have been 'pending'"). More fundamentally, the majority opinion in Saffold did not discuss, let alone cite, Artuz, a case that the

decision in Nara, which placed heavy emphasis on whether a petition is "akin to an application for state post-conviction or other collateral review." Nara, 264 F.3d at 316.[9] In this case, petitioner's King's Bench petition and his petition for reconsideration of the Supreme Court's denial of that petition, claimed ineffective assistance of counsel and prosecutorial misconduct and sought vacatur of his conviction. The substance of the King's Bench petition and the petition for reconsideration are, therefore, most certainly "akin to an application for state post-conviction or other collateral review."

In reaching this conclusion, the Court notes that some courts – none of which are in this Circuit – have rejected arguments that petitions seeking unavailable remedies can be considered

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Courts of Appeals, including the Third Circuit in Nara, have read to require a broad construction of § 2244(d)(2).

Even if Saffold were to have undermined Nara, the Court concludes that this determination is one better left to the Third Circuit. Accordingly, the Court decides this case based on its reading of Nara.

[9] The Nara court also found relevant the fact that the "PCRA trial court accepted the motion, allowed the parties to brief the motion, and made full consideration of the record before denying it." Nara, 264 F.3d at 316. This Court does not, however, read Nara to provide that these circumstances are prerequisite to concluding that a state-court petition was properly filed.

Such a reading of Nara would be inconsistent with the decisions in Pace, Rosado, and Cooper – decisions with which this Court agrees – finding that untimely PCRA petitions were properly filed. Pennsylvania courts have determined that the timeliness provisions in the PCRA are jurisdictional. Commonwealth v. Fahy, 737 A.2d 214, 222 (Pa. 1999). Thus, a PCRA court's decision on an untimely petition is not based on a "full consideration of the record"; rather, because Pennsylvania courts do not have jurisdiction to consider an untimely petition, courts dismissing untimely petitions will have, by necessity, only undertaken a limited consideration of the record as it applies to the PCRA statute of limitations.

In sum, the Court concludes that the true import of Nara is to direct that courts focus on whether a petition is "akin to an application for state post-conviction or other collateral review" when conducting the "properly filed" inquiry.

"properly filed." See, e.g., Adeline v. Stinson, 206 F.3d 249, 252-53 (2d Cir. 2000) (per curiam) (holding that state-court motion not recognized under New York law as an application for post-conviction relief was not "properly filed" on ground that petitioners are not permitted to "create their own methods of seeking post-conviction relief"); Bond v. Walsh, 2002 WL 460046, at *2 (E.D.N.Y. Feb. 12, 2002) (citing Adeline, 206 F.3d at 252) ("Bond's time to file a § 2254 petition was not tolled while he ignored established state procedures to seek relief plainly unavailable from the New York Court of Appeals. Neither was it tolled while he moved that court for reconsideration of its order of dismissal."); Draughon v. Dewitt, 2001 WL 840312, at *1 (S.D. Ohio July 11, 2001) (citing Adeline, 206 F.3d at 252) (holding that "motion for reconsideration" was not "properly filed" because such motion was "not an application for state post-conviction relief recognized as such under governing state procedures").

These contrary cases in other jurisdictions, not binding on this Court, do not change the Court's conclusion. In short, the Court reads the Third Circuit's decision in Nara to demand a broader application of the "properly filed" inquiry. Notably, this reading of Nara does not implicate the concerns raised by the Second Circuit in Adeline with respect to the impact of including petitions seeking unavailable remedies in the realm of "properly filed" petitions. Specifically, the Second Circuit was concerned that an application of § 2244(d)(2) allowing petitioners to "create their own methods of seeking post-conviction relief" would result in a deluge of frivolous state-court filings:

> [S]o long as the state court were willing to keep its clerk's office door open to a petitioner, he or she could bring successive motions seeking to reinstate a denied petition for leave to appeal indefinitely and thus stave off the running of the AEDPA-proscribed time to file a federal petition for habeas corpus virtually in perpetuity.

Adeline, 206 F.3d at 252-53. Applying the Nara court's analysis avoids this problem because, at some point, the filing of state-court petitions crosses the line from petitions that are "akin to an application for state post-conviction or other collateral review" to petitions that are clearly intended to delay.[10]

The Court need not decide in this case when a state court filing crosses the line from one seeking collateral relief to one filed for some other purpose because the King's Bench petition at issue can only be viewed as seeking collateral review of petitioner's conviction. It sought the same remedy that is available under the PCRA. Additionally, there is no evidence that petitioner filed the petition intending to cause delay or for some other improper purpose. Significantly, assuming, arguendo, that petitioner's King's Bench petition, which was filed on April 1, 1996, was treated as a PCRA petition, it was timely filed. See Commonwealth v. Crider, 735 A.2d 730, 732 (Pa.Super.Ct.1999) (explaining that for petitioners whose convictions became final before January 16, 1996, amendments to the PCRA adopting a one-year statute of limitations, "the operative deadline" for first-time PCRA petitions would be January 16, 1997, well after petitioner's filing).

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[10] The Court notes that the Adeline court's concerns about repetitive filings in this manner are inconsistent with the Second Circuit's earlier rejection of the position that "construing 'properly filed' narrowly will invite a paper flow by state prisoners trying to extend the time in which they can file a habeas corpus petition indefinitely" because "prisoners serving jail time usually have little incentive to delay determinations of their habeas petitions." Bennett v. Artuz, 199 F.3d 116, 122-23 (2d Cir. 1999), aff'd, 531 U.S. 4 (2000). See also Harrison v. Artuz, 105 F. Supp. 2d 101, 105 n.4 (E.D.N.Y. 2000) (comparing Bennett with Adeline and noting "some ambivalence in the Second Circuit on the question whether a narrow construction of the 'properly filed' requirement in 28 U.S.C. § 2244(d)(2) serves any useful purpose").

Nor does the Court find any reason to treat the petition for reconsideration differently. To the extent that the King's Bench petition is viewed as a PCRA petition, petitioner clearly would have been entitled to seek reconsideration of an adverse decision. See Commonwealth v. Castro, 766 A.2d 1283, 1285 (Pa. Super. Ct. 2001) (recognizing propriety of PCRA court's granting of motion to reconsider dismissal of PCRA petition on timeliness grounds). Respondents' argument emphasizing the unavailability of petitions for reconsideration in the Supreme Court of Pennsylvania does not convince the Court otherwise.

In sum, the substance of petitioner's King's Bench petition and the petition for reconsideration – as opposed to their form – compels the Court to conclude that they were "properly filed" under § 2244(d)(2). Accordingly, while those petitions were pending in the Supreme Court of Pennsylvania, the AEDPA statute of limitations was tolled.

2. Date of Filing of PCRA Petition

Petitioner provides no support for his statement in his Objections that he filed his PCRA petition on January 13, 1997, as opposed to January 16, 1997. Likewise, although petitioner must have mailed his PCRA petition some time before the date on which it was filed in the PCRA court, the record before this Court does not provide any support for petitioner's assertion that he did so on January 13, 1997.

Given the Court's conclusion that the King's Bench petition and petition for reconsideration tolled the AEDPA statute of limitations, the filing date of the PCRA petition is essential to the outcome of this case. If petitioner is correct, and the PCRA petition was filed on January 13, 1997, his habeas petition was timely filed – on the 364th day of the one-year limitations period. If petitioner is incorrect, however, and his PCRA petition was filed on January

16, 1997, his habeas petition was not timely filed, as it was filed two days after the expiration of the limitations period. Thus, the Court will remand the petition to Judge Scuderi for further analysis of the timeliness issue.

IV. CONCLUSION

For the foregoing reasons, the Court will sustain petitioner's objection as to the tolling effect of the King's Bench petition and the petition for reconsideration. The Court will remand the § 2254 petition to Judge Scuderi for a supplemental report and recommendation covering further analysis of the timeliness of that petition consistent with this Memorandum, and, depending on the resolution of the timeliness issue, further analysis of the claims raised in the § 2254 petition.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD,	:	
	:	
Petitioner,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
PHILIP L. JOHNSON; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; and THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,	:	**NO. 02-0448**
	:	
Respondents.	:	

ORDER

AND NOW this 6th day of September, 2002, upon consideration of petitioner's Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 (Document No. 1, filed January 28, 2002), United States Magistrate Judge Peter B. Scuderi's Report and Recommendation dated May 29, 2002 (Document No. 8, filed May 29, 2002), Petitioner's Objections to Magistrate Judge's Report and Recommendation (Document No. 11, filed June 14, 2002), and all related filings, for the reasons stated in the foregoing Memorandum, **IT IS ORDERED**, as follows:

1. Petitioner's Objections to Magistrate Judge's Report and Recommendation (Document No. 11, filed June 14, 2002) are **SUSTAINED IN PART** and **OVERRULED IN PART**, as follows:

(a) Petitioner's Objections as to whether his King's Bench petition and petition for reconsideration were "properly filed" under 28 U.S.C. § 2244(d)(2) such that they tolled the statute of limitations governing the pending § 2254 petition are **SUSTAINED**;

(b) In all other respects, petitioner's Objections are **OVERRULED WITHOUT PREJUDICE** to petitioner's right to raise arguments contained in his Objections during further proceedings on the § 2254 petition.

2. Petitioner's § 2254 petition is **REMANDED** to United States Magistrate Judge Peter B. Scuderi for submission of a supplemental report and recommendation covering (a) further analysis as to the timeliness of the petition consistent with the foregoing Memorandum and (b) depending on the result of that analysis, consideration of the claims raised in the petition.

BY THE COURT:

Jan E. DuBois

JAN E. DuBOIS, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

SEP 17 2002

MICHAEL E. KUNZ, Clerk

PAUL SATTERFIELD	:	CIVIL ACTION
	:	
v.	:	
	:	
PHILIP L. JOHNSON, et al.	:	No. 02-0448

ORDER

AND NOW, this 17th day of September, 2002, upon consideration of Judge Jan E. DuBois' Order of September 6, 2002, (copy attached), IT IS ORDERED that:

1. The District Attorney shall file a specific and detailed supplemental answer specifically addressing the merits of the petition within sixty (60) days of the date of this Order, or no later than (11/17/02), pursuant to Rule 5, 28 U.S.C. fol. § 2254.

2. Respondents are directed to append to their supplemental answer any and all relevant documents, including, but not limited to, state court opinions, filings and notes of testimony.

BY THE COURT:

P. B. S.

PETER B. SCUDERI
UNITED STATES MAGISTRATE JUDGE

ENTERED
SEP 18 2002
CLERK OF COURT

(Reported at: 322 F. Supp. 2d 613)

B-10

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD	:	**CIVIL ACTION**
Petitioner,	:	
	:	
vs.	:	
	:	
PHILIP L. JOHNSON, et al.,	:	
Respondents	:	
	:	**NO. 02-0448**

ORDER AND MEMORANDUM

ORDER

AND NOW, this 21st day of June, 2004, upon consideration of Paul Satterfield's Pro Se Petition for Writ of Habeas Corpus (Docket No. 1, filed January 28, 2002), Response to Petition for Writ of Habeas Corpus (Docket No. 6, filed May 13, 2002), Addendum to Response to Petition for a Writ of Habeas Corpus (Docket No. 7, filed May 15, 2002), Report and Recommendation of United States Magistrate Judge Peter B. Scuderi (Docket No. 8, filed May 29, 2003), Traverse [by Petitioner Paul Satterfield] (Docket No. 9, filed June 5, 2002), Petitioner Paul Satterfield's Objections to Magistrate Judge's Report and Recommendation (Docket No. 10, filed June 13, 2002), Order of September 9, 2002 remanding Habeas Petition to Magistrate Judge for submission of supplemental report and recommendation (Docket No. 12), Petitioner Paul Satterfield's Affidavit in Support of Objections to Magistrate Judge Report and Recommendation (Docket No. 14, filed September 19, 2002), Response to Petition-Writ of Habeas Corpus (Docket No. 15, filed November 18, 2002), Traverse by Petitioner Paul Satterfield (Docket No. 21, filed March 5, 2003), Motion by Petitioner Paul Satterfield for Summary Judgment (Docket No. 22, filed April 23, 2003), Supplemental Report and Recommendation of Magistrate Judge Peter B. Scuderi, (Docket No. 23, filed May 16, 2003), Order of July 16, 2003 adopting Supplemental

Report and Recommendation and denying Habeas Petition (Docket No. 26), Petitioner's Objections to Magistrate Judge's Supplemental Report and Recommendation (Docket No. 61, filed July 21, 2003), Order of July 24, 2003, granting petitioner's request of July 21, 2003, for leave to file objections out-of-time (Docket No. 29, filed July 25, 2003), and Petitioner's Supplement to Motion for Reconsideration (Docket No. 31, filed August 1, 2003), **IT IS ORDERED** as follows:

1. That part of the July 24, 2003 Order which provides that petitioner's Objections to Magistrate Judge's Report and Recommendation would be treated as a Motion for Reconsideration of the Court's Order of July 16, 2003, is **VACATED**;

2. The Court's Order of July 16, 2003, in which the Court, *inter alia*, denied the Petition for Writ of Habeas Corpus is **VACATED**;

3. Petitioner's objection to the Magistrate Judge's conclusion that the ruling of the Superior Court of Pennsylvania that trial counsel was not ineffective was neither contrary to nor an unreasonable application of federal law is **SUSTAINED**;

4. All other objections to the Supplemental Report and Recommendation are **OVERRULED**;

5. The Supplemental Report and Recommendation of United States Magistrate Judge Peter B. Scuderi (Docket No. 8, filed May 29, 2003) is **ADOPTED IN PART** and **OVERRULED IN PART**, as follows:

(a) The Supplemental Report and Recommendation is **NOT ADOPTED** with respect to petitioner's claim that his trial counsel was ineffective for failing to interview and call Eric Freeman and Grady Freeman as witnesses at trial;

(b) The Supplemental Report and Recommendation is **APPROVED AND ADOPTED** as to all other issues raised in the Petition for a Writ of Habeas Corpus;

4. Paul Satterfield's Pro Se Petition for Writ of Habeas Corpus is **GRANTED IN PART** and **DENIED IN PART**, as follows:

(a) The Petition is **GRANTED** with respect to petitioner's claim that his trial counsel was ineffective for failing to interview and call Eric Freeman and Grady Freeman as witnesses at trial;

(b) The Petition is **DENIED** as to all other claims;

5. Petitioner's conviction and sentence of June 10, 1985 are **VACATED** and **SET ASIDE**;

6. The execution of the writ of habeas corpus is **STAYED** for 180 days from the date of this Order to permit the Commonwealth of Pennsylvania sufficient time to grant petitioner a new trial and, if petitioner is found guilty, a new sentencing; and

7. Petitioner's Motion to Compel Compliance with Federal Rule of Appellate Procedure Rule 23(a) is **DENIED**.

MEMORANDUM

Currently before the court is the petition for a writ of habeas corpus filed by Paul Satterfield ("Satterfield" or "petitioner"). Satterfield, was convicted of first degree murder and possession of instruments of crime on June 10, 1985. On that date he was sentenced to life imprisonment on the murder conviction and a consecutive term of two and one-half years imprisonment on the conviction for possession of an instrument of crime. Id.

On January 23, 2003, petitioner filed the present Petition for Writ of Habeas Corpus

("Habeas Petition"). In their original answer, respondents asserted that the Habeas Petition should be dismissed because it was filed beyond the one-year statute of limitations under the Anti-Terrorism and Effective Death Penalty Act ("ADEPA"), 28 U.S.C. § 2244(d). The matter was referred to Magistrate Judge Peter B. Scuderi for a report and recommendation. Magistrate Judge Scuderi filed a Report and Recommendation on May 29, 2002, recommending that the matter be dismissed as time-barred. Petitioner filed Objections to the Report and Recommendation.

By Memorandum and Order dated September 6, 2003, the Court sustained in part and overruled in part petitioner's Objections and remanded the matter to Magistrate Judge Scuderi for a supplemental report and recommendation, directing that the timeliness issue be further analyzed and, depending on the resolution of the timeliness issue, that the merits of the petitioner be addressed.

Respondents then filed a Supplemental Response to the Habeas Petition, arguing that petitioner's claims were either unexhausted and procedurally defaulted or meritless. On May 16, 2003, Magistrate Judge Scuderi filed a Supplemental Report and Recommendation, addressing petitioner's claims on the merits and concluding the claims should be denied. No objections to the Supplemental Report and Recommendation were filed during the allowed time. The Court then adopted the Supplemental Report and Recommendation and denied the Petition for a Writ of Habeas Corpus by Order dated July 16, 2003.

Thereafter, on July 25, 2003, petitioner filed Objections to the Supplemental Report and Recommendation, accompanied by a letter request for an extension of time to file them. The Court granted that request by Order dated July 24, 2003, ruling that the Objections would be

treated as a Motion for Reconsideration of the Court's July 16, 2003, Order.

The Court now concludes the most appropriate way to address petitioner's objections to the Supplemental Report and Recommendations is to vacate that part of the July 24, 2003 Order which provides that the objections would be treated as a motion for reconsideration and vacate the Order of July 16, 2003, approving and adopting the Supplemental Report and Recommendation and denying Satterfield's Habeas Petition.

Petitioner makes 27 objections to the Magistrate Judge's Supplemental Report and Recommendation. Many of these objections re-assert issues first raised in the Petition for Writ of Habeas Corpus and correctly addressed by the Magistrate Judge in his Supplemental Report and Recommendation. Other objections raise issues which can have no effect on this Court's decision to grant relief and need not be addressed by the Court.

The Court writes at this time to address only one objection–petitioner's objection to the Magistrate Judge's conclusion that the ruling of the Superior Court of Pennsylvania that trial counsel was not ineffective for failing to investigate and call at trial two exculpatory eyewitnesses, Eric Freeman and Grady Freeman, was neither contrary to nor an unreasonable application of federal law. For the reasons that follow, the Court sustains this objection.

The Habeas Petition will be granted and petitioner's convictions and sentence will be vacated and set aside without prejudice to the right of the Commonwealth of Pennsylvania to grant petitioner, within 180 days, a new trial and, if petitioner is found guilty, a new sentencing. The Supplemental Report and Recommendation is adopted and approved in all other respects and the Habeas Petition is denied in all other respects.

I. FACTS

This case arises out of a state prosecution for murder. The Pennsylvania Superior Court summarized the facts as follows:

> [On] April 28, 1983, at approximately 3:30 a.m. [petitioner], a television repairman, shot and killed William Bryant due to an earlier dispute between them over payment of a television repair bill. [Petitioner] shot Bryant four times with a .44 caliber handgun. The final shot was fired at close range, through Bryant's head, as he lay wounded in the street. A police search of [petitioner's] home and vehicle for ammunition under a properly issued warrant was conducted within several weeks of the murder but uncovered no evidence.
>
> Over a year later, [Petitioner] became acquainted with Wayne Edwards and his wife, Patricia Edwards. During a conversation with Mr. Edwards, [petitioner] described, in great detail, his shooting and killing of a former customer. Mr. Edwards immediately informed authorities of the information [petitioner] had divulged. [Petitioner] was arrested and charged. At trial, the Commonwealth's chief witness was Mr. Edwards, who testified on the details of the murder as told to him by [petitioner]. [Petitioner] admitted at trial he told Mr. Edwards he had once been a murder suspect. However, [petitioner] contended that the remainder of Mr. Edwards' testimony was fabricated because [petitioner] had pursued a romantic relationship with Mrs. Edwards.

Commonwealth v. Satterfield, No. 3054 Phila. 1998, at 8 (Pa. Super. Aug. 22, 2000).

The warrant used to search petitioner's home contained a description by an eyewitness of a Caucasian blond haired male as the perpetrator of the crime. Petitioner is an African-American male with brown hair. The defense never interviewed the eyewitness who gave that description, Eric Freeman, and he was not called to testify at trial. In addition, Eric Freeman's brother Grady Freeman, also an eyewitness, was never interviewed by the defense nor called to testify at trial. However, petitioner read to the jury the statement in the warrant made by Eric Freeman. In addition, defense counsel, in summation, referred to the statement in the warrant.

II. STANDARD OF REVIEW

A. FEDERAL REVIEW OF STATE COURT CONVICTIONS

The Anti-Terrorism and Effective Death Penalty Act, 28 U.S.C. § 2254 ("ADEPA") establishes the scope of federal habeas review of a state court conviction. Section 2254(d) provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States.
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

This case implicates § 2254(d)(2). As will be discussed in detail below, the Court concludes that the decision of the Superior Court denying relief to Satterfield was based on an unreasonable determination of the facts in light of the evidence presented in state court.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

The standard for evaluation of an ineffective assistance of counsel claim was set forth by the Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). To establish ineffective assistance of counsel under Strickland, petitioner must demonstrate that his counsel's performance (1) "fell below an objective standard of reasonableness," id. at 688, and (2) that counsel's deficient performance prejudiced the defendant. Id. at 692. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 686.

A court, in determining whether counsel's performance fell below an objective standard of reasonableness, must evaluate "whether counsel's assistance was reasonable considering all the circumstances." Id. at 688. In applying the Strickland test to counsel's performance, a court must be "highly deferential," and "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. at 689. The Court must not use the benefit of hindsight to second-guess strategic decisions made by counsel unless they are unreasonable. Id. at 690.

An evaluation of the failure on the part of defense counsel to call a witness at trial under the first prong of Strickland, requires the Court to decide whether the decision not to call the witness was "in the exercise of reasonably professional judgment." Strickland, 466 U.S. at 690; see also Duncan v. Morton, 256 F.3d 189, 201 (3d Cir.2001) (citing Strickland, and concluding that the failure to use certain testimony "amounted to a tactical decision within the parameters of reasonable professional judgment")). Given professional reasonableness as a touchstone, "[t]he Constitution does not oblige counsel to present each and every witness that is suggested to him." United States v. Balzano, 916 F.2d 1273, 1294 (7th Cir.1990)(observing that "such tactics would be considered dilatory unless the attorney and the court believe that the witness will add competent, admissible, and non-cumulative testimony to the trial record").

The second prong of Strickland, requires a defendant to "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 694. A reasonable probability is a, "probability sufficient to undermine confidence in the outcome" Id. In other words, a petitioner must show a

"reasonable likelihood that ... information [not presented] would have dictated a different trial strategy or led to a different result at trial," Lewis v. Mazurkiewicz, 915 F.2d 106, 115 (3d Cir.1990), or a "reasonable probability that he would have been acquitted had [the uncalled witness] testified either alone or in conjunction with [him.]" Id.

C. OBJECTIONS TO A REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C.A. § 636(b)(1)(C) the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate."

III. DISCUSSION

A. PETITIONER'S OBJECTIONS TO THE MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND RECOMMENDATION

Petitioner filed untimely objections to the Supplemental Report and Recommendation which the court chose to consider. The Court writes at this time to address only one objection–petitioner's objection to the Magistrate Judge's finding that the ruling of the Superior Court of Pennsylvania that trial counsel was not ineffective for failing to investigate and call at trial two exculpatory eyewitnesses, Eric Freeman and Grady Freeman, was neither contrary to nor an unreasonable application of federal law. This ineffective assistance of counsel claim was the third claim petitioner raised in the Habeas Petition. Petitioner exhausted this claim on direct appeal and raised the issue again on collateral review.

1. The Decision of the Superior Court on Petitioner's Ineffective Assistance of Counsel Claim for Failure to Interview and Call the Freemans as Witnesses at Trial is Based on an Unreasonable

Determination of the Facts in Light of Evidence Presented in the State Court Proceedings.

In considering the claim on direct appeal, the Pennsylvania Superior Court stated the following:

> During the course of the investigation of the Bryant homicide, the police interviewed Grady and Eric Freeman who lived within the vicinity of the homicide. Both stated they heard gunshots at about 3:45 a.m. on April 28, 1983. Eric described the man he saw when he looked out his window as a "**white male** with short **blond hair**." Grady gave a description of a "**light-skinned guy,**[1] about 5'7" or 8" in his early thirties."
>
> * * * *
>
> [T]rial counsel testified at the evidentiary hearing that although he had not personally interviewed either witness, he had reviewed their statements made to the police and he did send his investigator to try to talk to them. The investigator was unable to locate either witness. Additionally, counsel admitted that he was interested in Eric Freeman's statement as Eric had identified the man he saw as a white male with blond hair. Grady, on the other hand, identified the man as a **"light-skinned" black male**, with short cut hair, in his early thirties. . . Trial counsel determined that only the description given by Eric would possibly have been of value to the defense.
>
> At trial, counsel chose to make reference to Eric Freeman's statement through [Petitioner's] testimony. Counsel had [Petitioner] read the arrest warrant including the description of the subject given by Eric Freeman thereby getting the eyewitness statement before the jury. Counsel also argued this description to the jury in closing statement. The course chosen by counsel had a reasonable basis in promoting [Petitioner's] interests. Counsel chose this strategy so as to avoid the Commonwealth's cross-examination of Eric Freeman and additionally to avoid the Commonwealth's rebutting Eric's statement with that of Grady Freeman.

Commonwealth v. Satterfield, 2697 Phila. 1986, at 2, 5-6 (Pa. Super. July 22, 1987) (emphasis added). The Magistrate Judge concluded that this decision was neither contrary to, nor an

---

[1]Grady Freeman identified the man as a "light skin guy" in the Police Report.

unreasonable application of, the standard set forth in Strickland, the relevant federal law on ineffective assistance of counsel.

The Court disagrees with the Magistrate Judge's conclusion regarding trial counsel's decision not to interview and call Eric Freeman and Grady Freeman as witnesses at trial and rejects that part of the Supplemental Report and Recommendation. To the contrary, the Court rules that the determination of the Superior Court of Pennsylvania that "the course chosen by counsel had a reasonable basis in promoting [petitioner's] interest" is based on a misreading by trial counsel and the Superior Court of the statement given to the police by Grady Freeman. Thus, reliance by the Superior Court on that misreading is "an unreasonable determination of the facts in light of evidence presented in the state court proceedings." 28 U.S.C. § 2254(d)(1)-(2).

Counsel's statement that the Freemans' statements were contradictory and that, therefore, not presenting Eric Freeman and Grady Freeman as witnesses was a reasonable trial strategy is based on an erroneous reading of Grady Freeman's statement to the police. Grady Freeman told the police the following:

> Q. Mr. Freeman, what can you tell me about the shooting that occurred in the 5600 blk. of Litchfield St. a short while ago?
>
> A. I was upstairs in my room, in the back room. I heard a shot and I didn't pay any attention to it at first. Then I heard about four more shorts. Then I looked out my back window that looks up Litchfield St. and I saw a **light skin guy** about 5'7" or 8" wearing a dark sports jacket, about his early 30's, walking fast at first, but then he started running towards a car in the middle of Litchfield St. He had his right hand inside his jacket by the pocket, the inside pocket. The car was like a Volks Wagen station wagon, a dark color, and it was running and the lights were on. He was looking all around and then he just hopped in the car and drove off and he turned right on Florence St. I came downstairs to where my brother was in the kitchen then we went outside when the cops got there.

* * * *

Q. Would you recognize the male you saw running and drive off if you saw him again?

A. I can't say. I know he was medium height and real thin and **light skin** but I only saw him from the side and back. His hair was cut real close. He was dressed in like a suit, like Navy blue coat but the pants were darker.

Petitioner's Obj., Exhibit A (and within Exhibit A, Exhibit D) (emphasis added).

Eric Freeman told the police the following about the man he saw:

Q. Mr. Freeman, what do you know about the shooting?

A. I was downstairs in the kitchen of my house, I was doing dishes. I heard gunshots, it was like three in a row. I heard like three in a row. I hesitated, then I looked out the window, I lifted the shade a little bit and I seen this guy he looked like he was **white**, he had like **blond hair** and was wearing dark clothes it looked like a dark blue sports coat, he was about my height (5'9"). I could only see him from the side. He walked back to his car fast and before he open the door he looked both ways, he had a neat looking face, I tried to make out the license plate but it was a blur, it was yellow it had a little light on each side. He drove off, he stopped at the stop sign and then drove around the corner on Florence Ave towards 58th Street. When he was walking toward his car, he had his hand inside his jacket like he was putting away something.

* * * *

Q. When you say the guy looked **white**, was he **white** or **light skinned Negro**?

A. He was **white** with like **blond hair**, he was slim

* * * *

Q. Describe the male that you say walking to the car?

A. He was **white, blond hair,** clean cut looking face, slim, clear complexion, 5'9", about 14-150 lbs, wearing a blue sport coat, dark pants, in his late twenties or early thirties.

Q. Is there still white people living in the neighborhood?

A. Not too many in that area.

Petitioner's Obj., Exhibit A (and within Exhibit A, Exhibit E) (emphasis added).

Grady Freeman never described the man he saw to the police as a "light skinned black male" as counsel asserted. To the contrary, he described him as a "light skin guy . . . ." The two statements, which is all the information on these witnesses possessed by defense counsel, corroborate rather than contradict one another. Both Grady and Eric Freeman describe a man with white or light skin, between 5'7"-9" in height, in his early thirties wearing a blue sports jacket/blazer with dark pants. The statements are nearly identical.

Further, at an evidentiary hearing on post-trial motions, both Eric and Grady Freeman testified that the man they saw was "Caucasian" and in any event was not the defendant. Petitioner's Obj., Exhibit A at. 3-4. Specifically, Grady Freeman testified that the man he saw was a Caucasian, with light blond short hair and was much thinner than petitioner. According to Grady Freeman, he saw petitioner come out of the courtroom during the trial "but I had said to myself, I went home and told my mother, that he wasn't the one." Id. Eric Freeman similarly testified that the man he saw was Caucasian, weighing 140 pounds with short blond hair. Id. Their statements at that hearing were consistent with the statements they had earlier given to the police. Id.

The ruling of the Superior Court that the course chosen by counsel in not calling Eric Freeman as a witness at trial had a reasonable basis in promoting petitioner's interest was based entirely on a misreading of Grady Freeman's statement and the erroneous conclusion that his statement was inconsistent with that of his brother. Thus, the Court concludes that the decision

of the Superior Court was based on an unreasonable determination of the facts in light of the evidence presented in state court.

2. Counsel's Failure to Interview and/or Call the Freemans as Witnesses at Trial Amounts to Ineffective Assistance of Counsel

Although not controlling, the Court notes a relatively recent decision of the Pennsylvania Supreme Court announcing a five-part test for analyzing ineffective assistance of counsel claims based on counsel's failure to call a witness at trial. Commonwealth v. Holloway, 739 S.2d 1039, 1048 (Pa. 1999). There has not been a comparable elucidation of Strickland's standards in the federal courts as they apply to these particular facts. In Holloway, the Pennsylvania Supreme Court held that to prove that counsel was ineffective for failing to call a witness at trial, petitioner must show that: (1) the witness existed; (2) the witness was available to testify; (3) counsel knew or would have known of the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the witness was so prejudicial as to have denied petitioner a fair trial. The Court concludes that Holloway provides a useful framework to analyze petitioner's claims under Strickland and adopts that framework in this case. Read together, the first four prongs of Holloway clearly relate to the first prong in Strickland and the fifth prong of Holloway clearly relates to the second prong of Strickland.

As to the first Holloway prong–that the witness existed–petitioner established this fact when he called Eric Freeman and Grady Freeman as witnesses at the evidentiary hearing on post-trial motions.

As to the second prong–the witness was available to testify–petitioner presented evidence that Grady Freeman received a subpoena from the assistant district attorney handling the case,

Mr. Byrd, and sat outside the courtroom for half a day during the trial. N.T. 9/23/86, pp. 21-23. Similarly, Eric Freeman testified that at the end of May or the beginning of June 1985, he received a subpoena from Mr. Byrd. In response, he appeared at Mr. Byrd's office, spoke with him about his statement and was later driven home by a detective. N.T. 9/24/86, pp. 105-111.

As to the third prong–counsel knew or would have known of the existence of the witness–counsel testified to this fact at the evidentiary hearing. At the evidentiary hearing on post-trial motions, counsel testified:

> It was my feeling that Eric Freeman might have been of some benefit to the defense. In reviewing Grady's statement as recently as a matter of half an hour ago, I don't recall anything in Grady freeman's statement that would have been a great help to the defense although maybe, if we had the opportunity to talk with him, maybe we would have learned something, but Eric Freeman's statement did give us some interest because it referred to a white man with blond hair; and, of course, that is quite a different description than Mr. Satterfield's appearance.

N.T. 9/22/86, 15. From this statement it is clear that counsel was aware of the existence of both witnesses.

As to the fourth prong–the witness was willing to testify for the defense–the evidence supports the conclusion that both Eric and Grady Freeman were willing to testify at trial. Both witnesses responded to subpoenas from the prosecution; Grady Freeman appeared at the courtroom during the trial and Eric Freeman went to the District Attorney's Office.[2] In addition,

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[2]Counsel testified that he thought a subpoena was served on Eric Freeman but not Grady Freeman:

> THE COURT: . . . give us your judgment as to why you did not call the Freemans?
>
> MR. MANDELL: My reason for not calling them is we could not locate them, at least we could not physically get them to come into either my office or the courtroom although a subpoena was served on at least Eric Freeman. I do not have a copy of one prepared for Grady Freeman, but I know we had one for Eric

both witnesses appeared at the evidentiary hearing on post-trial motions.

The analysis of the first four prongs of Holloway leads inescapably to the conclusion that petitioner has met his burden under the first prong of Strickland. The failure to interview Eric Freeman and Grady Freeman and call them as witnesses at trial fell below an objective standard of reasonableness. Trial counsel's decision could not be considered sound trial strategy and was not made in the exercise of reasonably professional judgment.

The fifth prong of Holloway– the absence of the witness was so prejudicial as to have denied petitioner a fair trial–corresponds to the second prong of Strickland–counsel's deficient performance prejudiced the defendant. The Court concludes petitioner was prejudiced by counsel's deficient performance. Both Freemans testified at the evidentiary hearing on post-trial motions that the defendant was not the man they saw and that the man they saw was Caucasian. The Freemans were the only eyewitnesses to the crime. As described above, the statements of both Freemans were consistent and corroborated one another. Further, their testimony would have supported petitioner's trial testimony that he did not commit the crime.

The Superior Court ruled that petitioner was not prejudiced by counsel's failure to call Eric and Grady Freeman as witnesses at trial because when the petitioner testified he read the

---

> and I recall it was served on his house. Whether he actually took it or someone else in the household did, I don't recall.
>
> THE COURT: When he did not appear you did not ask for a bench warrant?
>
> MR. MANDELL: No.

N.T. 9/24/86 40-41. However, both Eric and Grady Freeman testified at the evidentiary hearing on post-trail motions that they never received a subpoena from defense counsel but did receive them from Mr. Byrd of the district attorneys' office. N.T. 9/22986, pp. 21, 23; N.T. 9/24/86, pp. 105-109, 111.

section of the warrant where the perpetrator was described as "Caucasian." The Superior Court thought this approach constituted an acceptable trial strategy because it prevented the prosecution from impeaching Eric Freeman with Grady Freeman's statement. However, as discussed above, the two witnesses gave consistent statements to the police and thus it was objectively unreasonable for counsel to conclude that Grady Freeman's statement could have been used to impeach Eric Freeman.

In addition, the Court notes that the prosecution commented in a negative way on the fact that Eric Freeman had not been called in its closing:

> Unlike this phantom person from the search warrant whose name we don't have, whose point of observations you don't have, whose sobriety or lack thereof you know nothing about, who is not subjected to cross-examination which as brought out by defense. Witnesses in a criminal care are equally available to both sides. If you have some evidence, put the person on the stand, subject him to cross-examination. . . There's this business with the unnamed witness who supposedly saw whatever distance a man that looked like a white man with blond hair. If the defendant is smart enough to get two driver's licenses, I submit that if this person did see what he saw, what is to prevent this defendant from planning on wearing a hat? And who is to say what kind of tricks the light played? And who is this person?

N.T. 6/7/85, pp. 75-73, 93. Because of the way in which the defense presented the exculpatory evidence, the prosecution was able to attack its evidentiary value and raise some of the issues it would have likely raised on cross-examination without the risk of the witness giving an answer damaging to the prosecution's case. Thus, the strategy utilized by defense counsel did not immunize the exculpatory evidence from attack.

In sum, the Court concludes that counsel's failure to interview and call the Freemans as witnesses at trial as amounts to ineffective assistance of counsel. Sullivan v. Fairman, 819 F.2d 1382 (7th Cir. 1987) (perfunctory attempts by counsel to investigate, locate, and interview

disinterested exculpatory witnesses whose testimony would have been material in a murder case, constitutes ineffective assistance of counsel). Although not binding on this Court, the opinion of the Supreme Court of Pennsylvania in Commonwealth v. Twiggs, 331 A.2d 440 (Pa. 1975) is directly on point and is instructive. In Twiggs, the Supreme Court of Pennsylvania ruled,

> [i]f counsel's failure to seek compulsory process was the result of sloth or lack of awareness of available alternatives then his assistance was ineffective. In a case where virtually the only issue is credibility of the Commonwealth's witness versus that of the defendant, failure to explore all alternatives to assure that the jury heard the testimony of a known witness who might be capable of casting a shadow of a doubt upon the Commonwealth's witness' truthfulness is ineffective assistance of counsel.

Id. at 443. Such is the case presented by petitioner.

III. CONCLUSION

For the reasons set forth above, the petitioner's Habeas Petition is granted as to his claim of ineffective assistance of counsel for failure to interview and call Grady Freeman and Eric Freeman as witnesses at trial. The Court adopts the Supplemental Report and Recommendation as to all other claims and issues.

BY THE COURT:

Jan E. DuBois

JAN E. DUBOIS, J.

B-11

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD **Petitioner,**	:	**CIVIL ACTION**
vs.	:	
PHILIP L. JOHNSON, et al., **Respondents**	:	
	:	**NO. 02-0448**

ORDER AND MEMORANDUM

O R D E R

AND NOW, this 16th day of November, 2004, upon consideration of Petitioner's Motion to Vacate Stay and Modify Initial Custody Order filed by *pro se* petitioner, Paul Satterfield, (Document No. 42, filed July 29, 2004), Response to Petitioner's Motion to Vacate Stay and Modify Initial Custody Order and Supporting Memorandum (Document No. 45, filed August 13, 2004), and Petitioner's Reply (Document No. 46, filed August 23, 2004), **IT IS ORDERED** that Petitioner's Motion to Vacate Stay and Modify Initial Custody Order is **DENIED**.

MEMORANDUM

I. INTRODUCTION

Petitioner, Paul Satterfield, is a state prisoner currently serving a life sentence at State Correctional Institution-Fayette in LaBelle, Pennsylvania. His sentence arises out of a June 10, 1985 conviction for first degree murder and possession of an instrument of crime.

Petitioner filed a Petition for a Writ of Habeas Corpus on January 28, 2002. By Order and Memorandum dated June 21, 2004, this Court granted the habeas petition with respect to the claim that petitioner's trial counsel was ineffective. *Satterfield v. Johnson*, 322 F. Supp. 2d 613,

614 (E.D. Pa. 2004). In that Order, the Court vacated the convictions for first degree murder and possession of an instrument of crime and the sentence, and stayed the execution of the writ of habeas corpus for 180 days to permit the Commonwealth of Pennsylvania ("Commonwealth") to grant petitioner a new trial. The Commonwealth appealed the ruling of this Court on July 21, 2004. The appeal is presently pending.

On July 29, 2004, petitioner filed the instant Motion to Vacate Stay and Modify Initial Custody Order. That Motion is denied.

The facts of the case are detailed in this Court's opinions in *Satterfield v. Johnson*, 218 F. Supp. 2d 715 (E.D. Pa. 2002), and *Satterfield v. Johnson*, 322 F. Supp. 2d 613. The facts will be repeated in this Memorandum only where necessary to explain the Court's ruling.

II. DISCUSSION

Fed. R. App. P. 23(c) provides that when the Government appeals a decision granting a writ of habeas corpus, the habeas petitioner shall be released from custody "unless the court or justice or judge rendering the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court orders otherwise." The Supreme Court has recognized in Fed. R. App. P. 23(c) a presumption of release pending retrial but, in doing so, it underscored that "[A] successful habeas petitioner is in a considerably less favorable position than a pretrial arrestee, [having] been adjudged guilty beyond a reasonable doubt by a judge or jury, and this adjudication of guilt [having] been upheld by the appellate courts of the State." *Hilton v. Braunskill*, 481 U.S. 770, 779 (1987).

The Supreme Court in *Hilton* explained that the decision of a district court on the question whether to release a petitioner on bail pending the Commonwealth's appeal of the grant

of a writ of habeas corpus should be guided by an analysis of several factors:

> [W]e think that a court making an initial custody determination under Rule 23(c) should be guided not only by the language of the Rule itself but also by the factors traditionally considered in deciding whether to stay a judgment in a civil case . . . . [T]he possibility of flight should be taken into consideration [.] . . . We also think that, if the State establishes that there is a risk that the prisoner will pose a danger to the public if released, the court may take that factor into consideration in determining whether or not to enlarge him. The State's interest in continuing custody and rehabilitation pending a final determination of the case on appeal is also a factor to be considered; it will be strongest where the remaining portion of the sentence to be served is long, and weakest where there is little of the sentence remaining to be served.
>
> The interest of the habeas petitioner in release pending appeal, always substantial, will be the strongest where the factors mentioned in the preceding paragraph are weakest. The balance may depend to a large extent upon determination of the State's prospects of success in its appeal. Where the State establishes that it has a strong likelihood of success on appeal, or where, failing that, it can nonetheless demonstrate a substantial case on the merits, continued custody is permissible if the second and fourth factors in the traditional stay analysis militate against release.

Hilton, 481 U.S. at 777-78.

Petitioner sets forth in his Petition and Reply many facts, not in evidence before this Court, in support of his argument that, because of the conduct of the Commonwealth, it is not entitled to a new trial and that, in any event, the Commonwealth will not prevail in any new trial. The Commonwealth, on the other hand, argues that "the evidence against petitioner is quite strong. He spontaneously confessed to the crime to his tennis partner, whom he had met more than a year after the killing took place. The jury heard this witness' testimony and found him entirely credible." Response to Petitioner's Motion at p. 2. In order to address these conflicting positions, this Court would be required to schedule an evidentiary hearing which would involve appointment of counsel and a significant delay in proceedings so as to enable counsel to review

the voluminous record. However, that is unnecessary because the Court concludes that, by reason of developing case law related to the timeliness of petitioner's habeas corpus petition following this Court's ruling on that issue on June 21, 2004, some of which was noted in that opinion, petitioner has not made a strong showing that he is likely to succeed on the merits.

In deciding to reach the merits of petitioner's claims, this Court determined that petitioner's "Petition for Writ of Habeas Corpus Ad Subjiciendum - *inter alia* - King's Bench Matter" and his motion for reconsideration of the denial of the King's Bench petition were properly filed petitions for state collateral relief. *Satterfield v. Johnson*, 218 F. Supp. 2d at 724. In the Order and Memorandum of September 6, 2002, this Court also determined that the limitation period of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254, should be tolled during the time the King's Bench petition and the motion for reconsideration were pending. *Id.* In so ruling this Court relied on the Third Circuit opinion in *Nara v. Frank*, 264 F.3d 310 (3d Cir. 2001). Thereafter, the Third Circuit in *Merritt v. Blaine*, 326 F.3d 157, 166 (3d Cir. 2003), clarified the law with regard to what constitutes a "properly filed" petition for state collateral relief in Pennsylvania and noted that, because of the intervening Supreme Court decision in *Carey v. Saffold*, 536 U.S. 214 (2002), "*Nara* would be analyzed differently." *See Merritt*, 326 F.3d at 166, n.7. This Court in its Memorandum of September 6, 2002, noted the fact that the *Saffold* case might be read to "somewhat narrow the construction of what constitutes a 'properly filed' state petition," but concluded that it was inappropriate to decide whether *Nara* - and district court opinions following it - have in fact been undermined by *Saffold*, and decided that this determination was better left to the Third Circuit. *Satterfield v. Johnson*, 218 F. Supp. 2d at 721, n.8.

The *Saffold* and *Merritt* decisions represent a refinement in the law that this Court applied in deciding on September 6, 2002, that the instant Petition for Writ of Habeas Corpus was timely filed. In view of the issues raised in *Saffold* and *Merritt*, the Court concludes that petitioner has not made a strong showing that he is likely to succeed on the merits.

III. CONCLUSION

This Court concludes that, because of decisions of the Supreme Court and the Third Circuit on what constitutes "a properly filed" petition for purposes of the AEDPA limitation period after this Court decided the issue on June 21, 2004, petitioner has not made a strong showing that he is likely to succeed on the merits. To the contrary, the Third Circuit might very well decide that the instant petition was untimely. Based on *Hilton*, this Court concludes that determination, without more, warrants denial of the Motion to Vacate Stay and Modify Initial Custody Order.

BY THE COURT:

JAN E. DUBOIS, J.

B-12

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD	:	**CIVIL ACTION**
Petitioner,	:	
	:	
vs.	:	
	:	**NO. 02-0448**
PHILIP L. JOHNSON, et al.,	:	
Respondents	:	

ORDER

AND NOW, this 23rd day of February, 2005, upon consideration of petitioner's Motion for Relief From Judgment and Order (Document No. 61, filed January 31, 2005), **IT IS ORDERED** that this Court's Memorandum of November 16, 2004, is **AMENDED** to reflect that the issue of the timeliness of petitioner's habeas corpus petition was addressed in the Court's Memorandum of September 6, 2002, not in its Memorandum of June 21, 2004. Thus, the November 16, 2004 Memorandum is **AMENDED** as follows:

1. Page 4, third line, **DELETE** the date "June 21, 2004," and **SUBSTITUTE** the date "September 6, 2002;" and,

2. Page 5, under the heading Conclusion, third line, **DELETE** the date "June 21, 2004," and **SUBSTITUTE** the date "September 6, 2002."

IT IS FURTHER ORDERED that, excepting only as noted above, petitioner's Motion for Relief From Judgment and Order is **DENIED**.

BY THE COURT:

Jan E. DuBois

JAN E. DUBOIS, J.

B-13

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD	:	**CIVIL ACTION**
Petitioner,	:	
	:	
vs.	:	
	:	**NO. 02-0448**
PHILIP L. JOHNSON, et al.,	:	
Respondents	:	

ORDER

AND NOW, this 23rd day of February, 2005, upon consideration of Petitioner's Motion for Immediate Release From Custody (Document No. 56, filed January 7, 2005), Addendum to Petitioner's Motion for Immediate Release From Custody (Document No. 55, filed January 6, 2005), and Response to Petitioner's Motion for Immediate Release From Custody (Document No. 62, filed February 7, 2005), **IT IS ORDERED** that Petitioner's Motion for Immediate Release From Custody and Addendum to Petitioner's Motion for Immediate Release From Custody are **DENIED** for the reasons set forth in this Court's Order and Memorandum dated November 16, 2004.

BY THE COURT:

JAN E. DUBOIS, J.

B-14

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD	:	**CIVIL ACTION**
Petitioner,	:	
	:	
vs.	:	
	:	**NO. 02-0448**
PHILIP L. JOHNSON, et al.,	:	
Respondents	:	

ORDER

AND NOW, this 23rd day of February, 2005, upon consideration of respondents' Motion for Stay Pending Appeal Pursuant to Federal Rule of Civil Procedure 62(d) (Document No. 58, filed January 12, 2005), Petitioner's Brief in Opposition to Respondent's Motion for Stay Pending Appeal Pursuant to Federal Rule of Civil Procedure 62(d) (Document No. 59, filed January 27, 2005), Addendum to Petitioner's Brief in Opposition to Respondent's Motion for Stay Pending Appeal Pursuant to Federal Rule of Civil Procedure 62(d) (Document No. 60, filed January 31, 2005), Petitioner's: Objection to and Motion to Strike Respondents' Response to Petitioner's Motion for Immediate Release From Custody and Motion for Immediate Release From Custody to Be Granted as Uncontested (Document No. 64, filed February 16, 2005), and Addendum to Petitioner's: Objection to and Motion to Strike Respondents' Response to Petitioner's Motion for Immediate Release From Custody and Motion for Immediate Release From Custody to Be Granted as Uncontested received by the Court on February 22, 2005,[1] **IT IS ORDERED** as follows:

[1]A copy of the Addendum to Petitioner's: Objection to and Motion to Strike Respondents' Response to Petitioner's Motion for Immediate Release From Custody and Motion for Immediate Release From Custody to Be Granted as Uncontested shall be docketed by the Deputy Clerk.

1. Respondents' Motion for Stay Pending Appeal Pursuant to Federal Rule of Civil Procedure 62(d) (Document No. 58) is **GRANTED**;[2] and,

2. Petitioner's Objection to and Motion to Strike Respondents' Response to Petitioner's Motion for Immediate Release From Custody (Document No. 64) and Petitioner's Motion for Immediate Release From Custody to Be Granted as Uncontested (Document No. 64) are **DENIED**.[3]

BY THE COURT:

JAN E. DUBOIS, J.

[2]The Court concludes, for the reasons set forth in its Order and Memorandum of November 16, 2004, that respondents are entitled to a stay pending appeal.

[3]Petitioner objects to the Response filed by respondents on the ground that it was filed a little over two (2) weeks late after a routine inquiry from a member of the Chambers staff as to whether respondents intended to file a response. That inquiry, entirely proper in all respects, does not entitle petitioner to any relief. Moreover, the Court routinely grants reasonable requests for extension of time even when the request is made after the due date for a filing, and did so in this case for petitioner in extending the time for responding to the Supplemental Report and Recommendation of United States Magistrate Judge Peter C. Scuderi dated May 16, 2003. See Order dated July 24, 2003.

B-15

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD **Petitioner,**	:	**CIVIL ACTION**
vs.	:	**NO. 02-0448**
PHILIP L. JOHNSON; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; and, THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA **Respondents**	:	

ORDER

AND NOW, this 19th day of April, 2006, the Court of Appeals for the Third Circuit, by Opinion and Order dated January 17, 2006, having reversed the Order of this Court dated June 21, 2004, granting Paul Satterfield's *pro se* Petition for Writ of Habeas Corpus, and remanded the case to this Court for dismissal, and the Mandate having issued, **IT IS ORDERED** that Paul Satterfield's *pro se* Petition for Writ of Habeas Corpus is **DISMISSED**.

BY THE COURT:

JAN E. DUBOIS, J.

ENTERED
APRIL 20, 2006

B-16

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD, **Petitioner,** **v.** **JOHN E. WETZEL,** **THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA, and** **THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,** **Respondents.**	**CIVIL ACTION** **NO. 02-448**

FILED JUL - 5 2016

ORDER

AND NOW, this 5th day of July, 2016, upon consideration of *pro se* petitioner, Paul Satterfield's Motion pursuant to Federal Rules of Appellate Procedure 10(e)(1) and (2) to correct and modify the record on appeal (Document No. 112, filed June 13, 2016), and Response to Motion to Correct and Modify the Record on Appeal (Document No. 114, filed June 29, 2016), **IT IS ORDERED** that *pro se* petitioner, Paul Satterfield's Motion pursuant to Federal Rules of Appellate Procedure 10(e)(1) and (2) to correct and modify the record on appeal is **DENIED** on the ground that the issue raised in the Motion – whether the District Attorney of Philadelphia County should be dismissed from the case – was raised by *pro se* petitioner in his Motion for Relief from Judgment and Orders (Document No. 94, filed March 31, 2014), and rejected by the Court by Order dated April 15, 2015. In the 2014 Motion *pro se* petitioner argued that the District Attorney is not a proper party to the action. The Court, in footnote 3 to its Order dated April 15, 2015, ruled that "[t]he District Attorney was lawfully added as a party to this action by Order dated April 9, 2002, and thus had standing to pursue an appeal."

ENTERED
JUL - 6 2016
CLERK OF COURT

IT IS FURTHER ORDERED that a certificate of appealability will not issue because reasonable jurists would not debate the propriety of this Court's procedural ruling with respect to petitioner's claim. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.

 B-17

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD, **Petitioner,** **v.** **JOHN E. WETZEL,** **THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA, and** **THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,** **Respondents.**	**CIVIL ACTION** **NO. 02-448**

ORDER

AND NOW, this 11th day of August, 2020, upon consideration of Petitioner's Amended Motion for Relief from Judgment And Orders (Document No. 191, filed July 28, 2020), Petitioner's Motion to Revisit and Correct Manifest Injustice/Grave Miscarriage of Justice Involving Court's Denial of Rule 60(b)(4) Relief Upon Consideration of Amended Rule 60(b)(4) Motion (Document No. 192, filed July 28, 2020), Petitioner's Motion's to Amended Motion for Relief From Judgment And Orders (Document No. 193, filed July 28, 2020) all of which were filed *pro se*, and the Court noting that petitioner is represented by counsel, **IT IS ORDERED** that all such motions submitted by petitioner, Paul Satterfield, *pro se*, are **REFERRED** to petitioner's counsel and are not considered by the Court on the ground that petitioner is

represented by counsel.[1] All such motions are referred to petitioner's counsel for adoption or rejection on or before August 25, 2020. To the extent that that motions are not adopted by petitioner's counsel they will be denied unless the Court grants petitioner's motion to proceed *pro se*.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.

[1] *See United States v. Agofsky*, 20 F.3d 866 (8th Cir. 1994), *cert. denied*, 513 U.S. 909 (1994) (holding that a court commits "no error" in refusing to rule on *pro se* motions raised by a represented party); *Abdullah v. United States*, 240 F.3d 683 (8th Cir. 2001) (upholding district court's decision to deny a defendant's *pro se* motions without consideration because the defendant was represented by counsel); *see also United States v. D'Amario*, 328 F. App'x 763, 764 (3d Cir. 2009) ("[A] district court is not obligated to consider *pro se* motions by represented litigants."); *Pagliaccetti v. Kerestes*, 948 F. Supp. 2d 452, 457 (E.D. Pa. 2013) ("Because there is no constitutional right to hybrid representation, . . . a district court is not obligated to consider *pro se* motions by represented litigants.), *aff'd*, 581 F. App'x 134 (3d Cir. 2014).

APPENDIX C

C-1

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-3108

PAUL SATTERFIELD,
Appellee

v.

PHILIP L. JOHNSON; THE DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,
Appellants

Present: SCIRICA, Chief Judge, SLOVITER, ROTH, McKEE, BARRY, AMBRO, FUENTES, SMITH, VAN ANTWERPEN, Circuit Judges and RESTANI,* Judge

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SUR PETITION FOR PANEL REHEARING WITH SUGGESTION FOR REHEARING *EN BANC*

The petition for rehearing filed by Appellee having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc,* the petition for rehearing is DENIED.

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: April 6, 2006
ARL/cc: PS: JHB

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* Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation, limited to panel rehearing only.

APPENDIX D

D-1

KeyCite Yellow Flag - Negative Treatment
Distinguished by Santini v. Wenerowicz, E.D.Pa., June 11, 2018

872 F.3d 152
United States Court of Appeals,
Third Circuit.

Paul SATTERFIELD, Appellant
v.
DISTRICT ATTORNEY PHILADELPHIA; Attorney General Pennsylvania; Secretary Pennsylvania Department of Corrections

No. 15-2190
|
Argued March 27, 2017
|
(Opinion Filed: September 26, 2017)

Synopsis

Background: Following affirmance of his first degree murder conviction, 369 Pa.Super. 652, 531 A.2d 528, state inmate filed petition for writ of habeas corpus. The United States District Court for the Eastern District of Pennsylvania, Jan E. DuBois, J., 322 F.Supp.2d 613, granted petition, and respondent appealed. The Court of Appeals, 434 F.3d 185, reversed and remanded. Following dismissal of petition on remand, petition moved for relief from judgment. The United States District Court for the Eastern District of Pennsylvania, No. 2–02–cv–00448, Jan E. DuBois, J., denied motion, and petitioner appealed.

[Holding:] The Court of Appeals, Vanaskie, Circuit Judge, held that district court was required to consider full panoply of equitable circumstances in determining whether change of law in Supreme Court's decision in *McQuiggin v. Perkins* warranted relief from judgment.

Vacated and remanded.

West Headnotes (9)

[1] Federal Courts
Altering, amending, modifying, or vacating judgment or order;proceedings after judgment

Court of Appeals reviews district court's denial of motion for relief from judgment for abuse of discretion. Fed. R. Civ. P. 60(b)(6).

2 Cases that cite this headnote

[2] Federal Courts
Abuse of discretion in general

District court "abuses its discretion" when it bases its decision upon clearly erroneous finding of fact, erroneous conclusion of law, or improper application of law to fact.

1 Cases that cite this headnote

[3] Federal Civil Procedure
Catch-all provisions

District court may only grant relief from judgment based on "any other reason that justifies relief" in extraordinary circumstances where, without such relief, extreme and unexpected hardship would occur. Fed. R. Civ. P. 60(b)(6).

8 Cases that cite this headnote

[4] Habeas Corpus
Newly discovered evidence

Habeas petitioner asserting actual innocence may not avail himself of fundamental miscarriage of justice exception to overcome Antiterrorism and Effective Death Penalty Act's (AEDPA) one-year statute of limitations unless he persuades district court that, in light of new evidence, no juror, acting reasonably, would have voted to find him guilty beyond reasonable doubt. 28 U.S.C.A. § 2244(d)(1).

7 Cases that cite this headnote

[5] Habeas Corpus
Relief from judgment;revocation or modification

In deciding whether change of law in Supreme Court's decision in *McQuiggin v. Perkins*, which held that properly supported claim of actual innocence could excuse failure to comply with Antiterrorism and Effective Death Penalty Act's (AEDPA) statute of limitations, was "extraordinary circumstance" that could support relief from judgment dismissing habeas petition as untimely, district court was required to consider full panoply of equitable circumstances, evaluate nature of change along with all equitable circumstances, and clearly articulate reasoning underlying its ultimate determination. 28 U.S.C.A. § 2244(d)(1); Fed. R. Civ. P. 60(b)(6).

10 Cases that cite this headnote

[6] **Habeas Corpus**
⇦ Miscarriage of justice;actual innocence

Underlying fundamental-miscarriage-of-justice exception to Antiterrorism and Effective Death Penalty Act's (AEDPA) statute of limitations is sensitivity to injustice of incarcerating innocent individual, and doctrine aims to balance societal interests in finality, comity, and conservation of scarce judicial resources with individual interest in justice that arises in extraordinary case. 28 U.S.C.A. § 2244(d)(1).

Cases that cite this headnote

[7] **Habeas Corpus**
⇦ Miscarriage of justice;actual innocence

Change in law brought about by Supreme Court's decision in *McQuiggin v. Perkins*, which held that properly supported claim of actual innocence could excuse failure to comply with Antiterrorism and Effective Death Penalty Act's (AEDPA) statute of limitations, will only permit habeas petitioner to overcome his time-barred petition if he can make credible showing of actual innocence. 28 U.S.C.A. § 2244(d)(1); Fed. R. Civ. P. 60(b)(6).

7 Cases that cite this headnote

[8] **Habeas Corpus**
⇦ Relief from judgment;revocation or modification

In ruling on motion for relief from judgment dismissing habeas petition as untimely, district court may account for principles of finality and comity, as expressed through Antiterrorism and Effective Death Penalty Act (AEDPA) and habeas jurisprudence, by considering whether conviction and initial federal habeas proceeding were only recently completed or ended years ago, and when more time has elapsed since final conviction, court will give more weight to state's interest in finality. 28 U.S.C.A. § 2244(d)(1); Fed. R. Civ. P. 60(b).

1 Cases that cite this headnote

[9] **Habeas Corpus**
⇦ Relief from judgment;revocation or modification

In ruling on motion for relief from judgment dismissing habeas petition as untimely, considerations of finality and comity must yield to fundamental right not to be wrongfully convicted. 28 U.S.C.A. § 2244(d)(1); Fed. R. Civ. P. 60(b).

Cases that cite this headnote

***154** On Appeal from the United States District Court for the Eastern District of Pennsylvania (D.C. Civil No. 2–02–cv–00448), District Judge: Hon. Jan E. DuBois

Attorneys and Law Firms

Aren K. Adjoian, Esq. [Argued], Arianna J. Freeman, Esq., Federal Community Defender Office for the Eastern District of Pennsylvania, 601 Walnut Street, The Curtis Center, Suite 540 West, Philadelphia, PA 19106, Counsel for Appellant Paul Satterfield

Susan E. Affronti, Esq., Simran Dhillon, Esq. [Argued], Philadelphia County Office of District Attorney, 3 South Penn Square, Philadelphia, PA 19107, Counsel for Appellees District Attorney of Philadelphia, Attorney General of Pennsylvania, and Secretary of the Pennsylvania Department of Corrections

Before: AMBRO, VANASKIE, and RESTREPO, Circuit Judges

OPINION OF THE COURT

VANASKIE, Circuit Judge.

Society views the conviction of an innocent person as perhaps the most grievous mistake our judicial system can commit. Reflecting the gravity of such an affront to liberty, the "fundamental miscarriage of justice" exception has evolved to allow habeas corpus petitioners to litigate their constitutional claims despite certain procedural bars if the petitioner can make a credible showing of actual innocence. In 2013, the Supreme Court's decision in *McQuiggin v. Perkins*, 569 U.S. 383, 133 S.Ct. 1924, 185 L.Ed.2d 1019 (2013), extended this doctrine to allow petitioners who can make this showing to overcome the Antiterrorism and Effective Death Penalty Act's ("AEDPA") one-year statute of limitations. [1] In doing so, the Supreme Court recognized that an untimely petition should not prevent a petitioner who can adequately demonstrate his actual innocence from pursuing his claims. This view reflects society's value judgment that procedure should yield to substance when actual innocence is at stake.

1 AEDPA, 110 Stat. 1214, states that "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2244(d)(1).

Despite repeatedly asserting his innocence, Appellant Paul Satterfield was convicted of first degree murder in 1985 and sentenced to life in prison. After many years of direct and collateral litigation, he appeared to emerge victorious when the District Court, acting on his habeas petition, found that his ineffective assistance of counsel claim was meritorious. But Satterfield's hopes for relief were short-lived, as we reversed the order granting habeas relief after finding that his petition was barred by AEDPA's statute of limitations. Satterfield's fight was revived several years later when the Supreme Court handed down its decision in *McQuiggin*. Had this decision been earlier, Satterfield had more solid support to pursue his ineffective assistance of counsel claim in spite of his untimely petition. In *McQuiggin*' s wake, Satterfield sought relief from the judgment denying his habeas petition, characterizing *McQuiggin*'s change in relevant decisional law as an extraordinary circumstance to justify relief under Federal Rule of Civil Procedure 60(b)(6).

The District Court denied Satterfield's Rule 60(b)(6) motion after determining that *McQuiggin* was not an extraordinary circumstance. While we do not opine ***155** whether the Rule 60(b)(6) motion should ultimately be granted, we will nonetheless vacate the District Court's order. In *Cox v. Horn*, 757 F.3d 113 (3d. Cir. 2014), we held that changes in decisional law may—when paired with certain circumstances—justify Rule 60(b)(6) relief. A district court addressing a Rule 60(b)(6) motion premised on a change in decisional law must examine the full panoply of equitable circumstances in the particular case before rendering a decision. In this case, we believe that the District Court did not articulate the requisite equitable analysis, and we will remand for proper consideration.

Separately, and perhaps more importantly, we explain that the nature of the change in decisional law must be weighed appropriately in the analysis of pertinent equitable factors. *McQuiggin* implicates the foundational principle of avoiding the conviction of an innocent man and attempts to prevent such a mistake through the fundamental miscarriage of justice exception. If Satterfield can make the required credible showing of actual innocence to avail himself of the fundamental miscarriage of justice exception had *McQuiggin* been decided when his petition was dismissed, equitable analysis would weigh heavily in favor of deeming *McQuiggin*'s change in law, as applied to Satterfield's case, an exceptional circumstance justifying Rule 60(b)(6) relief. While Satterfield's ability to show actual innocence is not case determinative in that the District Court must weigh all of the equitable factors as guided by precedent, we clarify that the nature of the change in law cannot be divorced from that analysis.

I.

The tortuous path to Satterfield's current appeal begins more than three decades ago. In 1983, Satterfield visited the home of Azzizah Abdullah to repair her television set. When Satterfield had finished and the television appeared to be working properly, Abdullah paid Satterfield's fee. But the television ceased working only a short while later, prompting Abdullah to summon Satterfield back to her home to complete the task. He made several additional attempts to fix the recalcitrant television, but his efforts were in vain. During Satterfield's final service call to Abdullah's home, her husband William Bryant became frustrated with Satterfield's repeated failures. Conflict erupted. When Bryant demanded Abdullah's money back while brandishing a knife and a baseball bat, [2] Satterfield returned the money and quickly departed, never reporting the incident to the police.

2 There are three versions of this event: (1) Satterfield testified that Bryant poked him with the baseball bat, (J.A. 544); (2) Wayne Edwards claimed that Satterfield told him Bryant had struck him with the bat, (J.A. 488); and (3) Abdullah explained that Bryant had nudged Satterfield's shoulder with the bat, (J.A. 465).

Approximately one week after the altercation in Abdullah's home, Bryant was shot outside his home in the early morning hours. Police interviewed two eyewitnesses —brothers Eric and Grady Freeman—on the morning of Bryant's murder. The Freemans had been in their home at the time of the shooting and, upon hearing the gunshots, peered out from their windows at the crime scene. Eric Freeman reportedly saw a man who "looked like he was white," "had like blond hair," and was about 5'9". [3] (J.A. 695–97.) According to Eric, the man briskly walked to a parked car, looked both ways before getting in, ***156** and had his hand inside his jacket "like he was putting away something." (J.A. 695–97.) Grady Freeman similarly described seeing a "light skin guy" about 5'7" or 8". (J.A. 698.) Critically, Satterfield is a black man with brown hair and stands six feet tall. (J.A. 439.)

3 Both brothers also described the shooter has having closely cropped hair, while Satterfield was said to have had a bushy Afro of a brown or reddish color. (J.A. 436, 614.)

Investigators soon learned of Satterfield's recent altercation with Bryant. This information yielded a search warrant for Satterfield's home and car. Upon execution, however, the searches produced no evidence implicating Satterfield, and the investigation went dormant for about a year.

The story picks back up in 1984, when Satterfield met Patricia Edwards at a nearby racquet club. Mrs. Edwards suggested that Satterfield play tennis with her husband, Wayne Edwards. After playing together on several occasions, Satterfield and Mr. Edwards met for lunch at the racquet club. The conversation began with benign pleasantries, with the two discussing commonalities in their upbringings, among other things. Mr. Edwards claimed that the conversation eventually culminated with Satterfield admitting to Bryant's murder in fairly explicit detail. Mr. Edwards contacted the police through his attorney, and Satterfield was arrested days later.

At Satterfield's trial, Mr. Edwards testified to Satterfield's confession. The State Respondents characterize Mr. Edwards' testimony on the stand as both credible and corroborated by the evidence. Mr. Edwards told the jury that Satterfield had not reported his altercation with Bryant to the police because he assumed it would be futile based on a past experience with a customer. Mr. Edwards also explained that Satterfield had admitted to disposing of his .44 caliber gun—the purported murder weapon—shortly after the killing, only to later tell police the firearm had been stolen. According to the State Respondents, Mr. Edwards also testified to details of the crime that nobody beside the killer could have known; for instance, that the killer had fired four shots at the victim and that the victim was running away at the time he was struck. [4]

4 We note, however, that the search warrants indicated four bullets were removed from Bryant's body. (J.A. 708.)

Satterfield took the stand in his own defense. He admitted that he had told Mr. Edwards that he was once suspected of murder and recounted to Mr. Edwards the details laid bare in the search warrants he had been served with during the investigation. But Satterfield insisted that Mr. Edwards had fabricated the rest of the confession, possibly prompted by a developing romantic relationship between Satterfield and Mr. Edwards' wife. Satterfield also testified that he had owned a .44 caliber special gun like the one used in Bryant's murder, but reaffirmed that it had been stolen in an unreported burglary years before the killing. He nonetheless admitted that he had purchased .44 special

ammunition on the very day that he was assaulted by Bryant.

Satterfield was represented by attorney Lee Mandell at his murder trial. Mandell did not call either of the Freeman brothers as witnesses, nor did Mandell even interview either of the brothers prior to trial.[5] Instead, the only mention of either brother's eyewitness statement came when Satterfield read Eric Freeman's description of *157 the suspect from a search warrant affidavit. The jury convicted Satterfield of first degree murder in June 1985.

5 Mandell testified his investigator had encountered difficulty tracking the Freeman brothers down. Both brothers, however, responded to the State's subpoena to appear for the trial. Satterfield's initial post-trial counsel, Ms. Gelb, also had no problem locating the brothers and easily procuring their appearance at the post-trial motion hearing.

After his conviction, Satterfield filed post-verdict motions alleging that Mandell was ineffective for failing to present the Freemans as defense witnesses at trial. The trial court held an evidentiary hearing during which it heard testimony from Mandell and both Freeman brothers. Eric Freeman repeated his earlier description of the suspect as a white man with blonde hair. (J.A. 642.) Grady Freeman, however, took the opportunity to clarify his initial description of the suspect as having "light skin," now explaining that the suspect was "Caucasian" and had light blonde hair. (J.A. 620.) He further proclaimed that he was "positive" Satterfield was not the man he had seen at the time of the shooting. (J.A. 620.) Importantly, there was some sparring at the evidentiary hearing over whether Grady's initial statement to police that the suspect was light-skinned meant that the suspect had lighter black skin or was white. (J.A. 612.)

Following the evidentiary hearing, the trial court dismissed Satterfield's post-verdict motion and sentenced him to life imprisonment. The Pennsylvania Superior Court then denied his appeal, determining that that Mandell had pursued a valid trial strategy in attempting to avoid a rebuttal of Eric's favorable description of the suspect with Grady's initial statement. (J.A. 675.) But the Superior Court's conclusion relied on its observation that Grady Freeman had identified the fleeing man "as a 'light-skinned' black male, with cut short hair, in his early thirties," a description which "closely fit that of Satterfield." (J.A. 674.) Later, the District Court presiding over Satterfield's habeas proceedings would point out that the Superior Court's characterization of Grady's statement was in error. Grady Freeman had never described the suspect as a "light-skinned black male," but merely as "light-skinned." Nonetheless, the Pennsylvania Supreme Court denied allocatur.

Satterfield next filed a *pro se* King's Bench petition with the Pennsylvania Supreme Court in 1996. This petition was denied, along with his petition for reconsideration. Satterfield's 1997 *pro se* PCRA petition was also denied, and his appeals were unsuccessful.

In 2002—almost 20 years after Bryant's murder—Satterfield filed a federal habeas petition raising nine claims, including actual innocence and ineffective assistance of trial counsel for failing to present the Freemans as witnesses. A Magistrate Judge initially recommended the petition be dismissed as time-barred. After finding that Satterfield's King's Bench petition was a "properly filed" application for state post-conviction review, the District Court remanded the petition to the Magistrate Judge for further analysis of the timeliness issue and the merits of Satterfield's claims. The Magistrate Judge then issued a supplemental report recommending Satterfield's claims be denied on their merits, which the District Court initially adopted. But after Satterfield's objections, the District Court granted relief on his ineffective-assistance-of-counsel claim. The District Court concluded that the Pennsylvania Superior Court's determination that Mandell had a reasonable basis in not putting forth the Freemans' testimony was based, as mentioned earlier, on a misreading of Grady Freeman's statement. *Satterfield v. Johnson*, 322 F.Supp.2d 613, 620, 623–24 (E.D. Pa. 2004). The District Court, however, adopted the supplemental report and recommendation of the Magistrate Judge denying relief on Satterfield's other claims. *Id.* at 624.

*158 The State Respondents appealed the District Court's decision, arguing that Satterfield's petition should be dismissed as time-barred. We reversed and remanded, finding that Satterfield's King's Bench petition to the Pennsylvania Supreme Court was not a "properly filed" collateral challenge to his conviction for the purposes of 28 U.S.C. § 2244(d)(2), and thus did not toll AEDPA's statute of limitations. *Satterfield v. Johnson*, 434 F.3d 185, 195 (3d Cir. 2006). We also determined that Satterfield was not

entitled to equitable tolling. *Id.* at 196. Upon remand, the District Court dismissed Satterfield's petition.

In 2014, approximately 30 years after Satterfield's arrest in connection with Bryant's murder, he filed a motion with the District Court under Federal Rule of Civil Procedure 60(b)(6) seeking relief from the judgment dismissing his habeas petition. Satterfield argued that the Supreme Court's holding in *McQuiggin* was a change in decisional law that served as an extraordinary circumstance upon which Rule 60(b)(6) relief may issue. *McQuiggin* held that "actual innocence, if proved, serves as a gateway through which a petitioner may pass" to overcome an untimely petition under AEDPA. 133 S.Ct. at 1928. Upon review, the District Court ruled that *McQuiggin* was not a ground for relief and denied the Rule 60(b)(6) motion. Satterfield then requested a Certificate of Appealability, which we granted on the issue of whether *McQuiggin*, either alone or in combination with other equitable factors, is sufficient to invoke relief from final judgment under Rule 60(b)(6) to allow an appellant to raise an otherwise time-barred valid claim that trial counsel was ineffective.

II.

[1] **[2]** The District Court had jurisdiction pursuant to 28 U.S.C § 2241 and § 2254. We have appellate jurisdiction under 28 U.S.C. § 1291 and § 2253. We review the District Court's denial of Satterfield's Rule 60(b)(6) motion for abuse of discretion. *Cox v. Horn*, 757 F.3d 113, 118 (3d Cir. 2014). "A district court abuses its discretion when it bases its decision upon a clearly erroneous finding of fact, an erroneous conclusion of law, or an improper application of law to fact." *Id.*

III.

[3] Satterfield invokes Federal Rule of Civil Procedure 60(b)(6) to seek relief from the District Court's judgment dismissing his habeas petition. Rule 60(b) provides litigants with a mechanism by which they may obtain relief from a final judgment "under a limited set of circumstances including fraud, mistake, and newly discovered evidence." *Gonzalez v. Crosby*, 545 U.S. 524, 528, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005). Satterfield specifically relies upon Rule 60(b)(6), a catch-all provision extending beyond the listed circumstances to "any other reason that justifies relief." Despite the open-ended nature of the provision, a district court may only grant relief under Rule 60(b)(6) in "extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur." *Cox*, 757 F.3d at 120 (quoting *Sawka v. Healtheast, Inc.*, 989 F.2d 138, 140 (3d Cir. 1993)); *see also Boughner v. Sec'y of Health, Ed. & Welfare*, 572 F.2d 976, 978 (3d Cir. 1978). This is a difficult standard to meet, and "[s]uch circumstances will rarely occur in the habeas context." *Gonzalez*, 545 U.S. at 535, 125 S.Ct. 2641.

[4] Satterfield asserts in his Rule 60(b)(6) motion that a change in relevant decisional law occurring after his petition had been denied is an extraordinary circumstance upon which his Rule 60(b)(6) relief may issue. Satterfield identifies the ***159** Supreme Court's ruling in *McQuiggin*—handed down seven years after the District Court dismissed Satterfield's habeas petition on remand—as an intervening change in relevant decisional law that requires such relief. *McQuiggin* focused on the "fundamental miscarriage of justice" exception, a doctrine that had previously been applied to allow a habeas petitioner "to pursue his constitutional claims ... on the merits notwithstanding the existence of a procedural bar to relief" where the petitioner makes "a credible showing of actual innocence." 133 S.Ct. at 1931. The Supreme Court clarified that the fundamental miscarriage of justice exception would also permit a petitioner to overcome a petition that failed to comply with AEDPA's statute of limitations. Even so, a petitioner asserting actual innocence may not avail himself of the exception "unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Id.* at 1928, 1935 (quoting *Schlup v. Delo*, 513 U.S. 298, 329, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995)).

The decision in *McQuiggin* is particularly relevant to Satterfield's case because we reversed his successful ineffective assistance of counsel claim after finding that his petition was untimely under AEDPA. Had *McQuiggin* been in place at the time of Satterfield's habeas proceedings, an appropriate showing of actual innocence may have allowed Satterfield to overcome his untimely petition and pursue his ineffective assistance claim. Thus, we must determine whether *McQuiggin* is a change in decisional law that can serve as an extraordinary circumstance upon which Rule 60(b)(6) relief may issue,

either on its own or when paired with the equitable circumstances of the case.

A.

Satterfield properly characterizes *McQuiggin* as effecting a change in our decisional law. Prior to *McQuiggin*, we had never affirmatively held that a showing of actual innocence could serve as an equitable exception to AEDPA's one-year statute of limitations. In fact, several circuits were split on the issue of whether such an equitable exception or basis for equitable tolling existed at the time *McQuiggin* was decided. *Compare Rivas v. Fischer*, 687 F.3d 514, 548 (2d Cir. 2012) (a compelling claim of actual innocence may excuse an otherwise untimely habeas petition); *Lee v. Lampert*, 653 F.3d 929, 934 (9th Cir. 2011) (en banc) (same); *San Martin v. McNeil*, 633 F.3d 1257, 1267–68 (11th Cir. 2011) (same); *Lopez v. Trani*, 628 F.3d 1228, 1230–31 (10th Cir. 2010) (same); and *Souter v. Jones*, 395 F.3d 577 (6th Cir. 2005) (same), *with David v. Hall*, 318 F.3d 343, 347 (1st Cir. 2003) (a showing of actual innocence does not excuse an otherwise untimely filing of a habeas petition); *Cousin v. Lensing*, 310 F.3d 843, 849 (5th Cir. 2002) (same); and *Escamilla v. Jungwirth*, 426 F.3d 868, 871–72 (7th Cir. 2005) (same).

We had numerous opportunities to confront habeas petitioners' arguments that their actual innocence should permit an equitable exception to, or equitable tolling of,[6] the statute of limitations. In each case, we declined to decide whether a showing of actual innocence could provide a basis for an equitable exception or equitable tolling ***160** in the habeas context and instead opted to sidestep the issue by determining that the petitioners had failed to establish actual innocence. *See, e.g.*, *Munchinski v. Wilson*, 694 F.3d 308, 329 n.16 (3d Cir. 2012) (noting that other circuits were split on the existence of an actual innocence exception, but declining to consider the issue because the petitioner had shown the diligence and extraordinary circumstances sufficient for equitable tolling); *Scott v. Lavan*, 190 Fed.Appx. 196, 199 (3d Cir. 2006) (declining to consider whether an actual innocence exception exists because the petitioner had no basis to assert a claim of actual innocence); *Hussmann v. Vaughn*, 67 Fed.Appx. 667, 669 (3d Cir. 2003) (same); *see also Sistrunk v. Rozum*, 674 F.3d 181, 191 (3d Cir. 2012) (avoiding the question of whether actual innocence allowed for equitable tolling, and instead finding the petitioner's showing of actual innocence to be inadequate); *Teagle v. Diguglielmo*, 336 Fed.Appx. 209, 212 (3d Cir. 2009) (same); *Knecht v. Shannon*, 132 Fed.Appx. 407, 409 (3d Cir. 2005) (same). While Satterfield could have looked to other circuits to make an equitable-exception argument at the time his petition was denied, actual innocence had not yet been established as a basis for an equitable exception to untimely filing under AEDPA in our circuit.[7]

6 The Supreme Court explained in *McQuiggin* that there is a distinction between equitable tolling, where a petitioner seeks an extension of the prescribed statutory period to file, and an equitable exception, which would permit a petitioner to override the statute of limitations. 133 S.Ct. at 1931; *see also Rivas*, 687 F.3d at 547 n.42 (distinguishing between equitable tolling and equitable exceptions).

7 Satterfield did argue that actual innocence should allow for equitable tolling at the time of his petition.

B.

We turn next to whether the change in law borne by *McQuiggin* may properly serve as the basis of a Rule 60(b)(6) motion. Precedent makes clear that changes in decisional law alone will "rarely" constitute "extraordinary circumstances" for purposes of a Rule 60(b) motion. *Cox*, 757 F.3d at 121. Satterfield's reliance on an intervening change in the law is hardly novel in the habeas context, and petitioners have had little success with such arguments. The Supreme Court's decision in *Gonzalez v. Crosby* is a prime example of the difficulty of pursuing a Rule 60(b)(6) motion premised on a change in law. In *Gonzalez*, a district court had denied a prisoner's habeas petition on statute of limitations grounds. The prisoner later sought Rule 60(b)(6) relief, arguing that the Supreme Court's intervening decision in *Artuz v. Bennett*, 531 U.S. 4, 121 S.Ct. 361, 148 L.Ed.2d 213 (2000), marked a change in the interpretation of AEDPA's statute of limitations.[8] *Gonzalez*, 545 U.S. at 536, 125 S.Ct. 2641. The Court affirmed the denial of the prisoner's Rule 60(b)(6) motion, emphasizing that the district court's initial ruling on the timeliness of the petition was consistent with the Eleventh Circuit's then-prevailing interpretation of the statute. In that sense, the Court observed, "[i]t is hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a

different interpretation," and "[a]lthough [the Court's] constructions of federal statutes customarily apply to all cases then pending on direct review, not every interpretation of the federal statutes setting forth the requirements for habeas provides cause for reopening cases long since final." *Id.* (citation omitted).

8 The Supreme Court in *Artuz* held "that an application for state postconviction relief can be 'properly filed' even if the state courts dismiss it as procedurally barred." *Gonzalez*, 545 U.S. at 527, 125 S.Ct. 2641.

Both the State Respondents and the District Court interpret *Gonzalez* as foreclosing Rule 60(b)(6) relief in Satterfield's case. They conclude that the change in law brought about by *McQuiggin*—or any change in habeas law for that matter— ***161** cannot serve as an extraordinary circumstance justifying Rule 60(b)(6) relief. But *Gonzalez* does not mean that a change in law may never serve as the basis for Rule 60(b)(6) relief. *See Cox*, 757 F.3d at 123 ("*Gonzalez* did not say that a new interpretation of the federal habeas statutes—much less, the equitable principles invoked to aid their enforcement—is *always* insufficient to sustain a Rule 60(b)(6) motion."). Rather, *Gonzalez* leaves open the possibility that a change in law may—when accompanied by appropriate equitable circumstances—support Rule 60(b)(6) relief. [9]

9 The State's brief and District Court's opinion cite several Eastern District of Pennsylvania decisions holding that the change in law in *McQuiggin* is not an "extraordinary circumstance" that can support a 60(b)(6) motion. *See, e.g.*, *Garcia v. Varner*, Civ. A. No. 00-3668, 2014 WL 2777398, at *4 (E.D. Pa. June 19, 2014); *Williams v. Patrick*, Civ. A. No. 07-776, 2014 WL 2452049, at *6 (E.D. Pa. June 2, 2014); *Pridgen v. Shannon*, Civ. A. No. 00-4561, 2014 WL 1884919, at *3 (E.D. Pa. May 12, 2014); *Akiens v. Wynder*, Civ. A. No. 06-5239, 2014 WL 1202746, at *2–3 (E.D. Pa. Mar. 24, 2014). All of these decisions compare *McQuiggin* to *Gonzalez*, noting that both represent a change in decisional law based on the interpretation of the federal habeas statute of limitations. As in *Gonzalez*, these courts found that *McQuiggin* was not sufficient to be an extraordinary circumstance. We later explain that *McQuiggin* is not merely a change in the procedural law governing the statute of limitations in habeas cases, as *Gonzalez* was. But to the extent that *McQuiggin* and *Gonzalez* are similar, our decision in *Cox*, emphatically rejects the notion that a particular change in law is never an extraordinary circumstance. Notably, all of these district court cases were decided before *Cox* was issued, and none engage in a thorough examination of the case-specific equities.

The State Respondents also cite several cases from other circuits, all of which were rendered before *Cox*. *See, e.g.*, *Tamayo v. Stephens*, 740 F.3d 986, 990 (5th Cir. 2014); *Ryburn v. Ramos*, No. 09-cv-1176, 2014 WL 51880, at *2–3 (C.D. Ill. Jan. 7, 2014); *Rodgers v. Pfister*, No. 11-3120, 2013 WL 5745835, at *2 (C.D. Ill. Oct. 23, 2013). Indeed, the Fifth Circuit decision in *Tamayo* relies on an earlier decision in *Adams v. Thaler*, 679 F.3d 312, 320 (5th Cir. 2012), which we explicitly declined to adopt in *Cox*. 757 F.3d at 121.

Our decision in *Cox*, rendered almost ten years after *Gonzalez*, further confirms that our Circuit has "not embraced any categorical rule that a change in decisional law is never an adequate basis for Rule 60(b)(6) relief." *Id.* at 121–22. Instead, we have consistently taken the position "that intervening changes in the law *rarely* justify relief from final judgments under 60(b)(6)." *Id.* (emphasis in original). Rather than impose any *per se* or bright-line rule that a particular change in law is never an extraordinary circumstance, we adhere to a "case-dependent analysis" rooted in equity. *Id.* at 124. This analysis manifests as a "flexible, multifactor approach to Rule 60(b)(6) motions ... that takes into account all the particulars of a movant's case," even where the proffered ground for relief is a post-judgment change in the law. [10] *Cox*, 757 F.3d at 122.

10 We have explained that district courts should examine, "*inter alia*, [1] the general desirability that a final judgment should not be lightly disturbed; [2] the procedure provided by Rule 60(b) is not a substitute for an appeal; [3] the Rule should be liberally construed for the purpose of doing substantial justice; [4] whether, although the motion is made within the maximum time, if any, provided by the Rule, the motion is made within a reasonable time; ... [5] whether there are any intervening equities which make it inequitable to grant relief; [6] any other factor that is relevant to the justice of the [order] under attack...." *Lasky v. Cont'l Prods. Corp.*, 804 F.2d 250, 256 (3d Cir. 1986) (quoting *Mayberry v. Maroney*, 558 F.2d 1159, 1163 (3d Cir. 1977)).

[5] In this context, we opt for more analysis of the equitable circumstances at play in Satterfield's case. The District Court concluded that the change of law in

McQuiggin was not an extraordinary circumstance ***162** that could support Rule 60(b)(6) relief. As best we can tell, it incorrectly focused on whether *McQuiggin*, in isolation, was sufficient to serve as an extraordinary circumstance. *Cox*, on the other hand, requires a district court to consider the full panoply of equitable circumstances before reaching its decision. Whenever a petitioner bases a Rule 60(b)(6) motion on a change in decisional law, the court should evaluate the nature of the change along with all of the equitable circumstances and clearly articulate the reasoning underlying its ultimate determination. Thus we remand.

We will vacate the order of the District Court as it relates to Satterfield's Rule 60(b)(6) motion and remand to it to carry out another analysis. The task of weighing the equitable factors in order to grant or deny a Rule 60(b)(6) motion is "left, in the first instance, to the discretion of a district court." *Cox*, 757 F.3d at 124. Should the District Court grant Satterfield's motion, he will be permitted to pursue his meritorious ineffective-assistance-of-counsel claim once more.

IV.

While the District Court must take the first pass at weighing the equitable factors involved in Satterfield's Rule 60(b)(6) motion, we emphasize that the nature of the change in decisional law itself must be a factor in the analysis. The principles underlying the Supreme Court's decision in *McQuiggin* are fundamental to our system of government and are important to the inquiry on remand.

[6] *McQuiggin* allows a petitioner who makes a credible showing of actual innocence to pursue his or her constitutional claims even in spite of AEDPA's statute of limitations by utilizing the fundamental-miscarriage-of-justice exception—an exception "grounded in the 'equitable discretion' of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons." *McQuiggin*, 133 S.Ct. at 1931. Underlying the fundamental-miscarriage-of-justice exception is a "[s]ensitivity to the injustice of incarcerating an innocent individual," and the doctrine aims "to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case." *Id.* at 1932. For this reason, " '[i]n appropriate cases,' the principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperative of correcting a fundamentally unjust incarceration.' " *Murray v. Carrier*, 477 U.S. 478, 495, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986) (quoting *Engle v. Isaac*, 456 U.S. 107, 135, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982)) (alteration in the original). The Supreme Court has underscored the importance of these principles, explaining that "concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. That concern is reflected, for example, in the 'fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free.' " *Schlup*, 513 U.S. at 325, 115 S.Ct. 851 (quoting *In re Winship*, 397 U.S. 358, 372, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (Harlan, J., concurring)).

The values encompassed by the fundamental-miscarriage-of-justice exception and which drive the Supreme Court's decision in *McQuiggin* cannot be divorced from the Rule 60(b)(6) inquiry. *Cox* requires a weighing of the equitable factors at play in a particular case, and the nature of the change in law itself is highly relevant to that analysis. *McQuiggin* illustrates that where a petitioner makes an adequate showing of actual innocence, our ***163** interest in avoiding the wrongful conviction of an innocent person permits the petitioner to pursue his constitutional claims in spite of the statute-of-limitations bar. This interest is so deeply embedded within our system of justice that we fail to see a set of circumstances under which this change in law, paired with a petitioner's adequate showing of actual innocence, would not be sufficient to support Rule 60(b)(6) relief in this context.[11] Put another way, a proper demonstration of actual innocence by Satterfield should permit Rule 60(b)(6) relief unless the totality of equitable circumstances ultimately weigh heavily in the other direction. A contrary conclusion would leave open the possibility of preventing a petitioner who can make a credible showing of actual innocence from utilizing the fundamental-miscarriage-of-justice exception simply because we had not yet accepted its applicability at the time his petition was decided—an outcome that would plainly betray the principles upon which the exception was built. Such an outcome would also implicate two factors of the Rule 60(b) analysis recently identified by the Supreme Court: "the risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." *Buck v. Davis*, —— U.S. ——, 137 S.Ct.

759, 778, 197 L.Ed.2d 1 (2017). Thus, if a petitioner can make a showing of actual innocence, *McQuiggin*'s change in law is almost certainly an exceptional circumstance. [12]

11 This also marks the key difference between *McQuiggin* and *Gonzalez*, where the change in law was a statutory interpretation of AEDPA's statute of limitations, not an equitable exception to the statute's procedural requirements.

12 Because the equitable circumstances must be balanced, we acknowledge that, just as there may be facts that strengthen the determination that a change in law is extraordinary, there could also be a set of heavily unfavorable facts that require a different outcome.

[7] Given this observation about the importance of the change in law effected by *McQuiggin* and the weight it should carry in the equitable analysis, a court should focus its efforts primarily on determining whether Satterfield has made an adequate showing of actual innocence to justify relief. The change in law brought about by *McQuiggin* will only permit him to overcome his time-barred petition if he can make a credible showing of actual innocence—a burdensome task that requires a petitioner to "persuade[ ] the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *McQuiggin*, 133 S.Ct. at 1928, 1935 (quoting *Schlup*, 513 U.S. at 329, 115 S.Ct. 851). Thus, the miscarriage-of-justice exception and *McQuiggin*'s holding more broadly will not be applicable to Satterfield's case if he cannot make a proper showing of actual innocence, and the District Court must determine whether such a showing has been made as a threshold matter. We leave this inquiry entirely to the District Court on remand, and recognize that the issue may require an evidentiary hearing during which other equitable factors may come into play.

Among these additional equitable factors, the District Court may consider Satterfield's meritorious ineffective-assistance-of-counsel claim. The Supreme Court's recent decision in *Buck v. Davis* established that the severity of the underlying constitutional violation is an equitable factor that may support a finding of extraordinary circumstances under Rule 60(b)(6). The appellant in *Buck* sought to vacate the court's judgment so he could present an otherwise defaulted claim of ***164** ineffective assistance of trial counsel. 137 S.Ct. at 777–79. *McQuiggin* also makes relevant whether Satterfield raises a colorable claim of ineffective assistance of trial counsel, as the actual innocence exception only provides a gateway for courts to review a petitioner's separate claim of constitutional error. *See McQuiggin*, 133 S.Ct. at 1931; *see also Schlup*, 513 U.S. at 316–17, 115 S.Ct. 851 (noting that petitioners seeking habeas relief carry less of a burden when their convictions are the result of unfair proceedings —and the actual innocence threshold standard applies —than when they have been convicted after a fair trial). Because Satterfield's claim of constitutional error—counsel's unreasonable failure to investigate and present exculpatory eyewitness testimony—is the reason why the actual innocence exception could apply to his case, the gravity of that error bears on the weight of his *McQuiggin* claim.

In previously granting Satterfield's ineffective-assistance claim, the District Court concluded that Satterfield's counsel was ineffective in failing to call the Freeman brothers as witnesses or otherwise to present their testimony, and that counsel's error prejudiced Satterfield. Such a finding of constitutionally deficient performance under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), is rare. Thus, the District Court may consider weighing this factor in favor of finding extraordinary circumstances.

[8] Because the District Court is ruling on a Rule 60(b) motion in the habeas context, it may also account for the "[p]rinciples of finality and comity, as expressed through AEDPA and habeas jurisprudence" by "consider[ing] whether the conviction and initial federal habeas proceeding were only recently completed or ended years ago." *Cox*, 757 F.3d at 125. When more time has elapsed since the final conviction, a court will give more weight to the state's interest in finality.

[9] The Supreme Court, however, has established that considerations of finality and comity must yield to the fundamental right not to be wrongfully convicted. *See House v. Bell*, 547 U.S. 518, 536–37, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006); *Schlup*, 513 U.S. at 320–21, 115 S.Ct. 851 (citing *Murray*, 477 U.S. at 496, 106 S.Ct. 2639); *cf. Calderon v. Thompson*, 523 U.S. 538, 557, 118 S.Ct. 1489, 140 L.Ed.2d 728 (1998) ("In the absence of a strong showing of 'actual innocence,' the State's interests in actual finality outweigh the prisoner's interest

in obtaining yet another opportunity for review." (citation omitted)). Hence the District Court should give less weight to these factors when a petitioner asserts a threshold claim of actual innocence. The fact that Satterfield's state proceeding ended a decade ago should not preclude him from obtaining relief under Rule 60(b) if the court concludes that he has raised a colorable claim that he meets this threshold actual-innocence standard and that other equitable factors weigh in his favor.

As we have explained, though, the weighing of the equitable factors in this case belongs to the District Court in the first instance. Though we have pointed out the importance of the change in *McQuiggin* and its weight in the Rule 60(b)(6) analysis—as well as several other equitable factors for consideration—we express no opinion on the final outcome. The District Court is best positioned to carry out this analysis.

V.

For the foregoing reasons, we will vacate the April 16, 2015 order of the District Court with respect to the denial of Satterfield's request for Rule 60(b)(6) relief and remand for reconsideration of the ***165** whether the change of law wrought by *McQuiggin*, combined with the other circumstances of the case, merits relief under Rule 60(b)(6).

All Citations

872 F.3d 152

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APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD	:	CIVIL ACTION
	:	
v.	:	
	:	
PHILIP L. JOHNSON, et al.	:	NO. 02-CV0448

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

LYNNE ABRAHAM, District Attorney of Philadelphia County, by **J. HUNTER BENNETT**, Assistant District Attorney, and **THOMAS W. DOLGENOS**, Chief, Federal Litigation, on behalf of respondents, respectfully requests that the Petition for Writ of Habeas Corpus be dismissed with prejudice and without a hearing and, in support thereof, states:

1. A seriatim answer is dispensed with for the sake of clarity. The following numbered paragraphs outline the procedural background of this case.

2. On June 10, 1985, petitioner was convicted by a jury of first-degree murder and possession an instrument of crime for the shooting death of William Bryant. He was sentenced to life imprisonment. The Superior Court affirmed this judgment of sentence in a memorandum opinion dated July 22, 1987. Commonwealth v. Satterfield, 531 A.2d 528 (Pa. Super. 1987). On January 27, 1988, the Supreme Court of Pennsylvania denied allocatur. Commonwealth v. Satterfield, 539 A.2d 811 (Pa. 1988).

3. On April 1, 1996, petitioner filed a "Petition for Writ of Habeas Corpus Ad Subjiciendum – Inter Alia – King's Bench Matter" in the Supreme Court of

F-2

DISTRICT ATTORNEY'S OFFICE
1421 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19102
(215) 686-8700

LYNNE ABRAHAM
DISTRICT ATTORNEY

May 13, 2002

Honorable Peter B. Scuderi
United States District Court
U.S. Courthouse
601 Market Street, Room 3015
Philadelphia, Pennsylvania 19106

Re: Satterfield v. Johnson, et al.
Civil Action No. 02-0448

Dear Judge Scuderi:

Enclosed please find a copy of our Response to Petition for Writ of Habeas Corpus, the original of which has been filed with the Clerk.

Respectfully submitted,

J. Hunter Bennett

J. HUNTER BENNETT
Assistant District Attorney

/cmk
Enclosure

cc: Paul Satterfield

Pennsylvania, which was denied on June 7, 1996. A petition for reconsideration was denied October 11, 1996.[1]

4. On January 16, 1997, petitioner filed a pro se petition for relief pursuant to the Post Conviction Relief Act. Counsel was appointed and petitioner subsequently requested that he be permitted to proceed pro se. Following petitioner's execution of a written waiver, counsel was withdrawn. The PCRA court denied petitioner's pro se petition on September 21, 1998. On August 22, 2000, the Superior Court affirmed the PCRA court's dismissal in a memorandum opinion. Commonwealth v. Satterfield, 764 A.2d 1128 (PA. Super. 2000). The Supreme Court denied allocatur on April 30, 2001. Commonwealth v. Satterfield, 775 A.2d 805 (Pa. 2001).

5. On January 28, 2002, petitioner filed the instant pro se Petition for Writ of Habeas Corpus. Respondents deny that petitioner is entitled to federal habeas relief. His petition is time-barred and, therefore, must be dismissed.

DISCUSSION

The petition in this case is governed by the federal habeas statute, 28 U.S.C. § 2241, et seq., which was amended under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), effective on April 24, 1996. Section 2244(d) of the statute creates a strict one-year time limitation on the filing of new petitions and provides as follows:

> (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court. The limitation 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;

[1] This date is taken from petitioner's Petition for Writ of Habeas Corpus. The Commonwealth has no record of this denial in its files.

(B) the date on which the impediment to filing an application created by the 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). These limitations provisions have been construed to allow prisoners a one-year grace period following the effective date of April 24, 1996, in which to initiate their habeas actions, regardless of the date on which direct review concluded, as long as that date was prior to April 24, 1996. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998); Lindh v. Murphy, 96 F.3d 856, 866 (7th Cir. 1996), reversed on other grounds, 521 U.S. 320 (1997). Here, direct review of petitioner's claims concluded in 1988 after the Supreme Court of Pennsylvania denied allocatur. Accordingly, the one-year grace period is applicable and petitioner had until April 23, 1997 to file a timely federal habeas petition.

However, on January 16, 1997, after approximately 268 days of the limitations period had already expired, petitioner filed a PCRA petition which tolled the one-year limitations period, but only while it was pending.[2] See 28 U.S.C. § 2244(d)(2) (providing

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[2] Petitioner's "Petition for Writ of Habeas Corpus Ad Subjiciendum – Inter Alia – King's Bench Matter" did not toll the AEDPA limitations period because it was not a properly filed application for State post-conviction or other collateral review. The PCRA statute states that "[t]he action established in this subchapter shall be the **sole means** of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect including habeas corpus

that "[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 shall

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and coram nobis." 42 Pa.C.S. § 9242 (emphasis added). As the Supreme Court of Pennsylvania noted, "the plain language of the statute [] demonstrates quite clearly that the General Assembly intended that claims that could be brought under the PCRA must be brought under that Act . . . **Where [] a defendant's post-conviction claims are cognizable under the PCRA, the common law and statutory remedies now subsumed by the PCRA are not separately available to the defendant.**" Commonwealth v. Hall, 771 A.2d 1232 (Pa. 2001). Here, the claims raised by petitioner in his state habeas petition -- countless claims of ineffective assistance of counsel and prosecutorial misconduct -- were clearly cognizable under the PCRA. Thus, petitioner's state habeas petition was not a properly filed application for collateral review since the PCRA statute and Supreme Court of Pennsylvania mandated that these claims be presented in the form of a PCRA petition. Accordingly, the petition did not toll the AEDPA limitations period.

It must be noted that petitioner's state habeas corpus petition was not treated by the state courts as a PCRA petition. See Superior Court Slip Op. at 1, n. 1 (noting that petitioner filed a timely first PCRA petition on the last possible date: January 16, 1997). Indeed, it could not have been treated as such since it was filed in the Supreme Court rather than the Court of Common Pleas as the PCRA statute commands. See 42 Pa.C.S. § 9545(a) ("Original jurisdiction over a proceeding under this subchapter shall be in the court of common pleas. No court shall have authority to entertain a request for any form of relief in anticipation of the filing of a petition under this subchapter").

Even if petitioner's state habeas petition were given tolling effect, petitioner's federal habeas petition would still be untimely. Petitioner's state habeas petition was pending from April 1, 1996 until June 7, 1996, when the Supreme Court of Pennsylvania denied it. Since petitioner's federal habeas petition was filed close to six months too late, this two-month period is of no moment.

Petitioner's Petition for Reconsideration of the Supreme Court's denial of his state habeas petition did not toll the AEDPA limitations period. "Applications for reconsideration of denial of allowance of appeal are not favored and will be considered only in the most **extraordinary** circumstances." Pa.R.A.P. 1123(b) (emphasis added). Rule 1123 requires a petitioner seeking reconsideration to "[b]riefly and succinctly state grounds which are confined to intervening circumstances of substantial or controlling effect." Pa.R.A.P. 1123(b)(1). Here, petitioner cited no intervening circumstances warranting a grant of reconsideration (undoubtedly, because there were none). Rather, he confessed that he may have "overreached" in his request for relief in his state habeas petition. Giving tolling effect to this petition for reconsideration, which did not comply with Pa.R.A.P. 1123(b)(1) and thus, had no hope of being granted, would contravene the purpose of AEDPA.

not be counted toward any period of limitations under this subsection"). The Supreme Court of Pennsylvania denied allocatur from the Superior Court's affirmance of the PCRA court's dismissal of the petition on April 30, 2001. Therefore, the limitations period, of which only about 97 days remained, resumed its countdown on that date, leaving petitioner until approximately August 4, 2001 to file in federal court.

Nevertheless, petitioner did not file the instant petition until January 28, 2002, almost **six months** after the limitations period had expired. His petition is, therefore, time-barred and must be dismissed.

Petitioner cannot argue that the limitations period under AEDPA should be equitably tolled. His case is not one of those rare situations in which the "extraordinary circumstances" necessary for equitable tolling are present -- indeed, petitioner has failed to offer **any** explanation for the fact that his habeas petition was filed more than six months too late. See Miller v. New Jersey State Department of Corrections, 145 F. 3d 616, 618 (3d Cir. 1998) (equitable tolling of habeas may occur only in those rare circumstances where the petitioner has been prevented in some extraordinary way from asserting his rights).

WHEREFORE, respondents respectfully request that the Petition for Writ of Habeas Corpus be dismissed with prejudice and without a hearing.

Respectfully submitted,

J. HUNTER BENNETT
Assistant District Attorney

THOMAS W. DOLGENOS
Chief, Federal Litigation

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL SATTERFIELD	:	CIVIL ACTION
v.	:	
PHILIP L. JOHNSON, et al.	:	NO. 02-0448

CERTIFICATE OF SERVICE

I, J. HUNTER BENNETT, hereby certify that on May 13, 2002, a copy of the foregoing pleading was served by placing same, first class postage prepaid, in the United States Mail addressed to:

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SCI Pittsburgh
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