No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GERALD FUNK
Petitioner

vs.

SUPERINTENDENT ERIC TICE, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

APPENDIX

By: GERALD FUNK, pro se
ID # EA-5247
SCI Somerset
1600 Walters Mill Road
Somerset, PA 15510

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2972

GERALD FUNK

Appellant

v.

SUPERINTENDENT SOMERSET SCI; ATTORNEY GENERAL PENNSYLVANIA;
DISTRICT ATTORNEY UNION COUNTY

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 1-18-cv-02111)
District Judge: Honorable Yvette Kane

Argued on June 3, 2021

Before: AMBRO, HARDIMAN, and PHIPPS, Circuit Judges

(Opinion filed: August 10, 2021)

Tadhg Dooley
David R. Roth
Wiggin & Dana
One Century Tower
265 Church Street
New Haven, CT 06510

Bianca Herlitz-Ferguson **(Argued)**
Yale Law School
127 Wall Street

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New Haven, CT 06511

Counsel for Appellant[1]

D. Peter Johnson **(Argued)**
Union County Office of District Attorney
103 South 2nd Street
Lewisburg, PA 17837

Counsel for Appellees

OPINION*

AMBRO, Circuit Judge

Gerald Funk seeks our review of the District Court's denial of his petition for habeas corpus under 28 U.S.C. § 2254. We granted a certificate of appealability on the claim that his counsel was ineffective for failing to explain or advise him accurately about plea offers that were extended to him. For the reasons stated below, we affirm.

I. Background

In 1998, Gerald Funk allegedly attacked and raped a 64-year-old woman, resulting in charges of rape, aggravated assault, robbery, and attempted second- and third-degree murder. Funk claims he was willing to plead guilty to rape because there was DNA evidence linking him to the crime, but he was unwilling to plead guilty to the other charges. He reports this reticence created conflict with his first counsel, ultimately

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[1] We express our thanks to the Yale Law School Advanced Appellate Litigation Project and the supervising attorneys from Wiggin & Dana for taking on this matter *pro bono*.
* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

resulting in that counsel's withdrawal. Attorney Michael Suders subsequently stepped in to represent Funk, who now asserts that Suders provided ineffective assistance of counsel.

Throughout the proceedings there were several meetings about possible plea bargains. The record is murky as to the timing of these meetings. District Attorney Peter Johnson testified that the first meeting occurred in July 2000 outside of Funk's presence. Funk, by contrast, testified that he was present for a discussion with the District Attorney that month, but the details of his story closely align instead with Johnson's testimony relating to a second meeting in December 2000. Johnson reported that during the July meeting he offered a plea agreement where Funk could plead guilty to one count of rape. Funk did not accept this offer and now speculates that this is "presumably because it was never conveyed to him." Funk Br. at 9. Suders disputes this assertion, contending that he "always communicated" plea offers to Funk. App. at 286.

Johnson asserted that a second discussion regarding a plea deal occurred months later in December, immediately before trial but after the jury had been impaneled (as noted above, Funk testified that this meeting occurred in July). Both parties agree that Johnson directly offered Funk a deal that would result in a plea to one count of rape with a recommended sentence of 8 to 20 years. Johnson explained "how beneficial this plea would be" and there was no indication "at all" that Funk did not understand the terms of the plea agreement. App. at 233. Funk nonetheless rejected the plea offer and told Johnson, "I guess we're going to trial." App. at 262. He now claims this was because he believed the judge had a policy requiring any pleas made after jury selection to be "open"

pleas to all counts of the indictment, and he worried the judge would not accept a plea to just one count.[2] App. at 277. Funk contends that, although Suders and Johnson had already gotten the judge to waive this policy, Suders never took the time to explain that to him or to provide any guidance on whether he should accept Johnson's plea offer.

After trial began, Funk (likely suspecting the trial would not end well) asked Suders if he could still accept the offer that Johnson had previously presented. Suders "advised [Funk] about the . . . offer *and that it was open*." App. at 291 (emphasis added). Funk claims he interpreted this statement to mean that he could still accept the plea offer, but it would have to be an "open" plea to all counts. He argues that Suders therefore misrepresented the terms of the offer by again failing to mention that the judge had waived his "open-plea" policy. Funk claims that because he was unwilling to plead to any count but rape, he did not accept the offer.

After trial, the jury convicted Funk. His sentence was 30 to 60 years' imprisonment. In December 2003, after an unsuccessful appeal, Funk filed a Pennsylvania Post Conviction Relief Act ("PCRA") petition, which he later amended to include a claim that Suders provided ineffective assistance of counsel. In the course of a protracted procedural history, the PCRA Court held hearings at which Suders, Funk, and

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[2] There are notable inconsistencies in Funk's recollections. For example, before the PCRA Court, Funk testified that he was confused about whether the plea offer was viable because he believed Johnson had been disqualified from prosecuting the case and that it was dismissed. App. at 261–62, 276. On appeal, he does not claim any confusion on that basis. Nor does he explain why he would have told Johnson "I guess we're going to trial" if he believed the entire case had been dismissed.

Johnson testified. It found Suders' and Johnson's testimony credible and rejected Funk's ineffective assistance claim.

The Commonwealth court proceedings eventually concluded in September 2018 when the Pennsylvania Supreme Court denied Funk's request for reconsideration of his claims. Funk then filed a federal habeas petition. The Magistrate Judge recommended the petition be denied, and the District Court adopted this recommendation. Funk appeals to us.

II. Discussion

A. Jurisdiction and Standard of Review

The District Court had jurisdiction under 28 U.S.C. § 2254(a). We have jurisdiction under 28 U.S.C. § 2253. We apply the same standard as the District Court in reviewing the state court's decision. *Marshall v. Hendricks*, 307 F.3d 36, 50 (3d Cir. 2002). The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") "requires federal courts collaterally reviewing state proceedings to afford considerable deference to state courts' legal and factual determinations on the merits." *Taylor v. Horn*, 504 F.3d 416, 428 (3d Cir. 2007). Accordingly, we may overturn a state-court holding only if it was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). "[A] determination of a factual issue made by a State court shall be presumed to be correct. The applicant [for a writ of habeas corpus]

shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." *Id.* § 2254(e)(1).

Funk argues the PCRA Court relied on an unreasonable application of federal law when deciding that Suders did not provide ineffective assistance. The federal law at issue here is the test for ineffective assistance articulated in *Strickland v. Washington*:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense.

466 U.S. 668, 687 (1984). In this context, we determine "whether the state court's application of the *Strickland* standard was unreasonable"[3] or, in other words, "whether there is any reasonable argument" that counsel's performance satisfied the *Strickland* standard. *Harrington v. Richter*, 562 U.S. 86, 101, 105 (2011). "The standards created by *Strickland* and § 2254(d) are both highly deferential, . . . and when the two apply in tandem, review is doubly so." *Id.* at 105 (internal quotation marks and citations omitted).

B. Analysis

Funk argues to us the PCRA Court erred by misconstruing the *Strickland* issue as whether Suders *informed* him of the plea offer instead of whether counsel adequately *explained* the offer. *See* Funk Br. at 23, 24 (citing *Missouri v. Frye*, 566 U.S. 134 (2012); *Lafler v. Cooper*, 566 U.S. 156 (2012); *Hill v. Lockhart*, 474 U.S. 52 (1985)). As an

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[3] The PCRA Court applied the Pennsylvania standard for judging ineffective assistance of counsel claims. That presents no concern, as we have previously held that this standard is consistent with *Strickland*. *See Werts v. Vaughn*, 228 F.3d 178, 204 (3d Cir. 2000).

initial matter, it appears Funk told the PCRA Court that this case raised a "failure-to-inform" issue. *See* App. at 302 ("Suders at no time informed [Funk] the plea offer in fact remained available"). And even if the PCRA Court could have explored the nuances of Funk's argument more thoroughly, he still fails to satisfy the first prong of *Strickland*.[4]

1. The July 2000 Plea Offer

Funk asserts that it "stands to reason" that Suders failed to communicate the July 2000 plea offer to him, for otherwise he would have accepted it. Funk Br. at 29. But Suders testified that he "always communicated" plea offers to Funk, and the PCRA Court found Suders credible. App. at 286, 333. Funk's unsupported speculation to the contrary is insufficient to enable us to conclude that Suders failed to satisfy *Strickland*'s deferential standard.

2. The December 2000 Plea Offer

Second, Funk asserts that Suders provided ineffective assistance during the December 2000 plea-related meeting because he failed to disclose that the judge had waived his "open-plea" policy and did not explain the plea offer or give advice on whether Funk should take it. As noted above, the PCRA Court found Suders' testimony more credible on this issue than Funk's. And Johnson's testimony, which the PCRA Court also found credible, indicates the plea offer was thoroughly explained by him to Funk and there was no indication "at all" that Funk did not understand the terms. App. at 233. It appears that Suders and Funk had discussed the benefits and drawbacks of

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[4] As we hold that Funk has not satisfied the first *Strickland* prong of deficient performance, we do not reach its second prong.

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various plea options throughout the course of the proceedings, and Funk made clear that he was looking to plead guilty to one count of rape. Despite having received a plea offer containing the exact terms he wanted, Funk took matters into his own hands and told Johnson, "I guess we're going to trial." App. at 262. As the PCRA Court concluded, Suders "fulfilled his duty" and Funk nonetheless "rejected the plea agreement and chose to take his chances at trial." App. at 333.

3. The Plea Discussion After Trial Began

Finally, Funk argues Suders provided ineffective and inaccurate counsel about the terms of the plea offer after trial began. But Suders testified before the PCRA Court that he "advised" Funk about the offer and its potential consequences, and Funk "understood" the offer but decided he wanted to continue with trial. App. at 291–292. The PCRA Court found this testimony more credible than Funk's, and Funk has provided no basis for us to second guess that finding.

Funk hinges his argument on a two-sentence exchange between Johnson and Suders during the hearing in the PCRA Court: "[Johnson:] So you advised [Funk] about the eight to 20 offer and that it was open? [Suders:] Right." App. at 291. Funk interprets this statement to mean that Suders misrepresented that any plea deal would have to be an "open" plea to all counts. This argument is unsupported by the record. Suders did not admit to misrepresenting any aspect of the deal. His use of the term "open" could reasonably be interpreted to mean that he told Funk the plea offer was still available, not that the plea would have to be an "open" plea to all counts. It is therefore not clear that Suders made a misrepresentation at all. Moreover, Funk does not explain how he could

have believed a *one-count* offer for "eight to 20 years" was instead an "open" plea to *all counts*. In this context, we cannot conclude Suders' performance was deficient.[5]

* * * * *

We thus affirm the District Court's denial of Funk's habeas petition.

[5] Funk also alleges the PCRA Court made an unreasonable determination of the facts under 28 U.S.C. § 2254(d)(2), as it failed to parse out the three separate instances of alleged ineffective assistance of counsel. While the Commonwealth court did not engage in depth with the nuances of the timeline, this claim fails for the reasons stated above, as Funk has not demonstrated that Suders provided ineffective counsel even when considering the full timeline and the appropriate legal standard.

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

GERALD FUNK,	:	
Petitioner	:	**No. 1:18-cv-2111**
	:	
v.	:	**(Judge Kane)**
	:	**(Magistrate Judge Carlson)**
SUPERINTENDENT ERIC TICE, et al.,	:	
Respondents	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Before the Court is the June 4, 2019 Report and Recommendation of Magistrate Judge Carlson (Doc. No. 12), recommending that the Court deny the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by pro se Petitioner Gerald Funk ("Petitioner") (Doc. No. 1). After receiving an extension of time to do so (Doc. Nos. 14, 15), Petitioner filed objections to the Report and Recommendation on July 25, 2019 (Doc. No. 16).

In 2000, following a jury trial, Petitioner was convicted and sentenced by the Court of Common Pleas of Union County to serve 30-60 years in prison for aggravated assault, rape, and robbery. See Commonwealth v. Funk, Docket No. CP-60-CR-0000175-1999 (C.C.P. Union Cty.).[1] After pursuing unsuccessful post-trial motions, see id., Petitioner appealed his conviction and sentence, and on April 11, 2002, the Superior Court of Pennsylvania affirmed his judgment of conviction. See Commonwealth v. Funk, 823 MDA 2001 (Pa. Super. Ct.). The Supreme Court of Pennsylvania denied Petitioner's petition for allowance of appeal on June 3, 2003. See Commonwealth v. Funk, 338 MAL 2002 (Pa.).

[1] The Court may take judicial notice of state and federal court records. See Montanez v. Walsh, Civ. A. No. 3:CV-13-2687, 2014 WL 47729, at *4 n.1 (M.D. Pa. Jan. 7, 2014).

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On December 11, 2003, Petitioner filed a Post-Conviction Relief Act ("PCRA") petition. See Funk, Docket No. CP-60-CR-0000175-1999. Counsel filed an amended PCRA petition in 2005. See id. After several hearings, on September 4, 2012, the PCRA court found that counsel was ineffective in failing to challenge the imposition of consecutive sentences, and, accordingly, vacated Petitioner's sentence, and imposed a new aggregate sentence of 13-30 years in prison. See id. Petitioner subsequently moved to vacate the PCRA court's decision and have his PCRA petition reinstated. See id. The PCRA court denied that motion, and Petitioner appealed that decision. See id. On January 27, 2014, the Superior Court of Pennsylvania vacated the PCRA court's decision and judgment of sentence, reinstated Petitioner's original sentence, and remanded the matter to the PCRA court for further proceedings after concluding that the PCRA court and the Commonwealth had engaged in "unorthodox and improper maneuverings." See Commonwealth v. Funk, No. 854 MDA 2013 (Pa. Super. Ct.). The PCRA court denied Petitioner's PCRA petition on the merits on December 30, 2016. See Funk, Docket No. CP-60-CR-0000175-1999. On December 12, 2017, the Superior Court affirmed the denial of Petitioner's PCRA petition. See Commonwealth v. Funk, 220 MDA 2017 (Pa. Super. Ct.).

Subsequently, Petitioner filed a petition to file a reduced number of copies of a petition for allowance of appeal with the Supreme Court of Pennsylvania. (See Doc. No. 11-1 at 93.) In a letter dated March 7, 2018, the Supreme Court informed Petitioner that he had never filed a proper petition for allowance of appeal. (Id.) Petitioner was advised that he could file a petition for leave to file a petition for allowance of appeal nunc pro tunc because the deadline for filing a petition for allowance of appeal had expired on January 11, 2018. (Id.) Petitioner filed a petition for leave to file on January 11, 2018, which was denied on June 18, 2018. (Id. at 97.) His motion for reconsideration was subsequently denied on September 27, 2018. (Id.)

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Petitioner filed the instant § 2254 petition with this Court on November 1, 2018. (Doc. No. 1.) In his petition, Petitioner asserts that: (1) trial counsel was ineffective for failing to raise the argument that the evidence was insufficient to convict him of robbery and aggravated assault; (2) trial counsel was ineffective during the plea-bargaining process; and (3) trial counsel was ineffective for failing to file a motion asserting a speedy trial violation. (Id. at 16-29.) In his Report and Recommendation regarding Petitioner's § 2254 petition, Magistrate Judge Carlson agrees with Respondents that Petitioner's petition was not filed within the one-year statute of limitations, but that equitable tolling should apply to allow Petitioner's claims to be considered on the merits. (Doc. No. 12 at 13-16.) He further concludes that Petitioner's petition should be denied because his claims lack merit. (Id. at 17-24.)

Petitioner objects to Magistrate Judge Carlson's Report and Recommendation on the basis that it gave deference to state court decisions that "overlook[ed], misstate[d] or misconstrue[d] [his] claims and the evidence in record." (Doc. No. 16 at 1.) In support of his objections, Petitioner sets forth his claims for relief that he previously raised in his § 2254 petition. In making these arguments, Petitioner essentially reiterates the arguments previously advanced in his petition. Having considered these challenges, the Court concludes that Magistrate Judge Carlson correctly and comprehensively addressed them in his Report and Recommendation. Accordingly, Petitioner's objections will be overruled.

AND SO, on this 5th day of August 2019, upon independent review of the record and applicable law, **IT IS ORDERED THAT**:

1. The June 4, 2019 Report and Recommendation (Doc. No. 12) of Magistrate Judge Carlson is **ADOPTED**;

2. Petitioner's objections to the Report and Recommendation (Doc. No. 16) are **OVERRULED**;

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3. The petition for a writ of habeas corpus (Doc. No. 1) is **DENIED**;

4. A certificate of appealability **SHALL NOT ISSUE**; and

5. The Clerk of Court is directed to **CLOSE** the above-captioned action.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

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Doc. 12

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

GERALD FUNK	:	Civil No. 1:18-cv-2111
	:	
Petitioner,	:	(Judge Kane)
	:	
v.	:	(Magistrate Judge Carlson)
	:	
SUPT. ERIC TICE, et al.	:	
	:	
Respondents.	:	

REPORT AND RECOMMENDATION

I. Introduction

Pending before the court is a petition for writ of habeas corpus filed by the petitioner, Gerald Funk, a state inmate in the Pennsylvania Department of Corrections. Funk is currently incarcerated at the State Correctional Institution at Somerset following his convictions for aggravated assault, rape and robbery in December 2000. These charges were filed after Funk, who was twenty-five years old at the time, attacked and raped a sixty-four-year-old woman who was on her way to work. Notwithstanding the fact that his own DNA linked him to this sexual assault and robbery, in his petition Funk contends that there was insufficient evidence to convict him of aggravated assault and robbery, and that his trial counsel rendered ineffective assistance.

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Our review of the protracted and confusing procedural history in this case leads us to find that, while Funk's petition may be time-barred by the applicable statute of limitations, out of an abundance of caution, equitable tolling principles should apply and permit the claims to be considered on their merits. However, we find that none of Funk's claims have arguable merit, and thus, for the foregoing reasons, we will recommend that his petition be denied.

II. Statement and Facts of the Case

The pertinent factual background of the instant case is as follows:[1] Funk was convicted in December 2000 of aggravated assault, rape, and robbery, after he attacked and raped a sixty-four-year-old woman who was walking to work at Bucknell University in Lewisburg, Pennsylvania in 1998. Represented by counsel, Funk proceeded to a jury trial, was convicted, and was sentenced to an aggregate 30 to 60 years in prison. Funk appealed, and his judgment of sentence was affirmed by the Pennsylvania Superior Court in April 2002. His petition for allowance of appeal to the Pennsylvania Supreme Court was denied on June 3, 2003.

Funk filed a timely petition for post-conviction relief under Pennsylvania's Post Conviction Relief Act ("PCRA") on December 11, 2003, and appointed counsel filed an amended petition in March 2005. Subsequently, Funk decided to proceed

[1] The factual background is taken from the Pennsylvania Superior Court's decision affirming the denial of Funk's post-conviction relief petition. (Doc. 11-1, at 73).

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pro se, and the PCRA court directed appointed counsel to serve as standby counsel. After a series of hearings, in which the Commonwealth stipulated to a claim of ineffective assistance of counsel, on September 4, 2012, the PCRA court found trial counsel to be ineffective for failing to challenge the imposition of consecutive sentences, vacated Funk's sentence, and imposed a new aggregate sentence of thirteen to thirty years in prison. Funk then filed a motion to vacate the PCRA court's decision and have his petition reinstated. This motion was denied, and Funk appealed to the Superior Court.

After noting that the PCRA court and the Commonwealth had engaged in "unorthodox and improper maneuverings" in its September 4 proceeding, the Superior Court vacated the PCRA court's decision and remanded the case to the PCRA court with directions to reinstate the original PCRA petition. After numerous evidentiary hearings, the PCRA court denied Funk's petition on the merits on December 30, 2016, and Funk appealed to the Superior Court. On appeal, Funk challenged the PCRA court's denial of four claims of ineffective assistance, which included the failure to file a speedy trial motion, ineffectiveness during the plea-bargaining process, the failure to adequately challenge the sufficiency of the evidence for aggravated assault and robbery, and the failure to support Funk's motion to suppress evidence. The Superior Court affirmed the PCRA court's

decision on December 12, 2017, after a thorough analysis of the merits of Funk's claims.

On December 29, 2017, after his PCRA appeal was denied, Funk filed a motion requesting reargument of the Superior Court's decision, which was denied on February 23, 2018. (Doc. 11-1, at 92). Funk subsequently filed a "Petition to File Reduce[d] Number of Copies" to the Pennsylvania Supreme Court, and in response, he received a letter stating that he had never filed a proper Petition for Allowance of Appeal, and that his motion for reargument of the Superior Court's decision was not timely filed. (Doc. 11-1, at 93). He was advised that he could file a Petition for Leave to File a Petition for Allowance of Appeal Nunc Pro Tunc, as the deadline for filing a Petition for Allowance of Appeal had expired on January 11, 2018. (Id.) Funk did just that, and his petition for leave to file was denied on June 18, 2018. (Doc. 11-1, at 97). His subsequent motion for reconsideration was denied on September 27, 2018. (Id.)

Funk then filed the instant habeas petition on November 1, 2018. (Doc. 1). In this petition, Funk raises three grounds on which he believes he is entitled to habeas relief. First, he raises a sufficiency of the evidence challenge, arguing that there was insufficient evidence to convict him of aggravated assault and robbery. He also raises two ineffective assistance of counsel claims, one relating to the plea-bargaining process and one challenging counsel's failure to file a speedy trial

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motion. For their part, the respondents contend that Funk's petition is time-barred by the applicable one-year statute of limitations.

As a matter of express statutory tolling, we agree with the respondents that Funk's petition was not timely filed within the applicable statute of limitations period. However, given the complicated and confusing procedural history of this case, we believe that, out of an abundance of caution, equitable tolling principles should apply to permit the claims to be considered on their merits. In any event, we will recommend that this petition be denied, as Funk's claims fail on their merits and do not warrant habeas relief.

III. Discussion

A. State Prisoner Habeas Relief–The Legal Standard.

(1) Substantive Standards

In order to obtain federal habeas corpus relief, a state prisoner seeking to invoke the power of this Court to issue a writ of habeas corpus must satisfy the standards prescribed by 28 U.S.C. § 2254, which provides in part as follows:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> (b) (1) 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 unless it appears that—

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> (A) the applicant has exhausted the remedies available in the courts of the State;
>
> .....
>
> (2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

28 U.S.C. § 2254(a) and (b).

As this statutory text implies, state prisoners must meet exacting substantive and procedural benchmarks in order to obtain habeas corpus relief. At the outset, a petition must satisfy exacting substantive standards to warrant relief. Federal courts may "entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). By limiting habeas relief to state conduct which violates "the Constitution or laws or treaties of the United States," § 2254 places a high threshold on the courts. Typically, habeas relief will only be granted to state prisoners in those instances where the conduct of state proceedings led to a "fundamental defect which inherently results in a complete miscarriage of justice" or was completely inconsistent with rudimentary demands of fair procedure. See e.g., Reed v. Farley, 512 U.S. 339, 354 (1994). Thus, claimed violations of state law, standing alone, will not entitle a petitioner to § 2254 relief, absent a showing that those violations are so great as to be of a constitutional dimension. See Priester v. Vaughan, 382 F.3d 394, 401–02 (3d Cir. 2004).

(2) **Deference Owed to State Courts**

These same principles which inform the standard of review in habeas petitions and limit habeas relief to errors of a constitutional dimension also call upon federal courts to give an appropriate degree of deference to the factual findings and legal rulings made by the state courts in the course of state criminal proceedings. There are two critical components to this deference mandated by 28 U.S.C. § 2254.

First, with respect to legal rulings by state courts, under § 2254(d), habeas relief is not available to a petitioner for any claim that has been adjudicated on its merits in the state courts unless it can be shown that the decision was either: (1) "contrary to" or involved an unreasonable application of clearly established case law; see 28 U.S.C. § 2254(d)(l); or (2) was "based upon an unreasonable determination of the facts," see 28 U.S.C. § 2254(d)(2). Applying this deferential standard of review, federal courts frequently decline invitations by habeas petitioners to substitute their legal judgments for the considered views of the state trial and appellate courts. See Rice v. Collins, 546 U.S. 333, 338–39 (2006); see also Warren v. Kyler, 422 F.3d 132, 139–40 (3d Cir. 2006); Gattis v. Snyder, 278 F.3d 222, 228 (3d Cir. 2002).

In addition, § 2254(e) provides that the determination of a factual issue by a state court is presumed to be correct unless the petitioner can show by clear and convincing evidence that this factual finding was erroneous. See 28 U.S.C. §

2254(e)(1). This presumption in favor of the correctness of state court factual findings has been extended to a host of factual findings made in the course of criminal proceedings. See, e.g., Maggio v. Fulford, 462 U.S. 111, 117 (1983) (per curiam); Demosthenes v. Baal, 495 U.S. 731, 734–35 (1990). This principle applies to state court factual findings made both by the trial court and state appellate courts. Rolan v. Vaughn, 445 F.3d 671 (3d Cir.2006). Thus, we may not re-assess credibility determinations made by the state courts, and we must give equal deference to both the explicit and implicit factual findings made by the state courts. Weeks v. Snyder, 219 F.3d 245, 258 (3d Cir. 2000). Accordingly, in a case such as this, where a state court judgment rests upon factual findings, it is well-settled that:

> A state court decision based on a factual determination, ..., will not be overturned on factual grounds unless it was objectively unreasonable in light of the evidence presented in the state proceeding. Miller–El v. Cockrell, 537 U.S. 322, 123 S. Ct. 1029, 154 L.Ed.2d 931 (2003). We must presume that the state court's determination of factual issues was correct, and the petitioner bears the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1); Campbell v. Vaughn, 209 F.3d 280, 285 (3d Cir.2000).

Rico v. Leftridge–Byrd, 340 F.3d 178, 181 (3d Cir. 2003). Applying this standard of review, federal courts may only grant habeas relief whenever "[o]ur reading of the PCRA court records convinces us that the Superior Court made an unreasonable finding of fact." Rolan, 445 F.3d at 681.

(3) Procedural Benchmarks – Statute of Limitations

Furthermore, state prisoners seeking relief under Section 2254 must also satisfy specific, and precise, procedural standards. Among these procedural prerequisites is a requirement that petitioners timely file motions seeking habeas corpus relief. The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244, established a one-year statute of limitations on the filing of habeas petitions by state prisoners. In pertinent part, § 2244(d)(1) provides as follows:

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

See Miller v. New Jersey State Dep't of Corr., 145 F.3d 616, 617 (3d Cir. 1998).

The calculation of this limitations period is governed by a series of well-defined rules. At the outset, these rules are prescribed by statute, specifically 28 U.S.C. § 2244(d), prescribes several forms of statutory tolling. First, with respect to tolling based upon a petitioner's direct appeal of his conviction: "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." 28 U.S.C. § 2244(d)(1)(A). The courts have construed this tolling provision in a forgiving fashion, and in a manner that enables petitioners to toll their filing deadlines for the time periods in which they could have sought further direct appellate review of their cases, even if they did not, in fact, elect to seek such review. Thus, with respect to direct appeals, the statute of limitations is tolled during the period in which a petitioner could have sought discretionary appellate court review, by way of allocator or through a petition for writ of certiorari, even if no such petition is filed. Jimenez v. Quarterman, 555 U.S. 113, 119, 129 S. Ct. 681, 685, 172 L. Ed. 2d 475 (2009). After this period of time passes, however, by statute the judgment of conviction becomes final. 28 U.S.C. § 2244(d)(1)(A).

Section 2244(d)(2), in turn, prescribes a second period of statutory tolling requirements while state prisoners seek collateral review of these convictions in state court, and provides that:

> The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent