

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-6010

DENA INEZ MINTON,

Petitioner - Appellant,

v.

MIRANDA RICHARDSON,

Respondent - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:21-cv-00806-TDS-JEP)

Submitted: August 29, 2023

Decided: August 31, 2023

Before KING, AGEE, and BENJAMIN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Dena Inez Minton, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Dena Inez Minton seeks to appeal the district court's order dismissing her 28 U.S.C. § 2254 petition as untimely filed, and a subsequent order denying reconsideration. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommended that relief be denied and advised Minton that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017); *Wright v. Collins*, 766 F.2d 841, 846-47 (4th Cir. 1985); *see also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). Minton has forfeited appellate review by failing to file objections to the magistrate judge's recommendation after receiving proper notice.

Accordingly, we deny a certificate of appealability and dismiss the appeal. We also deny as moot Minton's motion to attend hearings in this court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

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DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DENA INEZ MINTON,)
Petitioner,)
v.) 1:21CV806
MIRANDA RICHARDSON,)
Respondent.)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Dena Inez Minton, a prisoner of the State of North Carolina, brings a Petition [Doc. #1] seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254, which Respondent opposes with a Motion to Dismiss [Doc. #8] and Brief [Doc. #9]. According to the Petition, on May 18, 2006, in the Superior Court of Forsyth County, North Carolina, Petitioner was convicted by a jury of one count of first-degree attempted murder and one count of assault with a deadly weapon with intent to kill inflicting serious injury before being sentenced to a total of twenty-two years and five months to twenty-eight years and five months in prison. Petitioner pursued a direct appeal, but the North Carolina Court of Appeals affirmed her conviction and the North Carolina Supreme Court denied discretionary review on December 6, 2007. State v. Minton, No. COA06-1566, 186 N.C. App. 306, 650 S.E.2d 675 (Table) (2007) (unpublished), rev. denied, 362 N.C. 91, 657 S.E.2d 24 (2007). Petitioner did not seek certiorari from the United States Supreme Court. Petitioner later filed a Motion

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for Appropriate Relief in the Superior Court of Forsyth County on April 14, 2021, which that court denied. (Petition, Exs.) Petitioner then petitioned for a writ of certiorari from the North Carolina Court of Appeals, but that court denied the petition on August 19, 2021 (*Id.*) Finally, on September 14, 2021, Petitioner signed her current Petition and mailed it to this Court. The Court received the Petition on October 15, 2021

Petitioner's Claims

Petitioner raises seven potential claims for relief in pages attached to her Petition, all of which relate to events occurring before or during her trial and sentencing. Specifically, she claims that her consecutive sentences are an unconstitutional double punishment, that the State did not provide the defense with a cell phone carried by the victim in the case, that investigators did not properly handle evidence at the crime scene, that one of the investigating officers was friends with the victim, that her attorney failed to call a helpful witness, that her attorney failed to properly prepare trial exhibits, and that counsel failed to secure a forensics expert.

Discussion

As stated above, Respondent filed a Motion to Dismiss. In that Motion, Respondent argues that Petitioner's claims were filed outside of the one-year limitation period, 28 U.S.C. § 2244(d)(1). In order to assess Respondent's argument, the Court first must determine when Petitioner's one-year period to file her § 2254 Petition commenced. In this regard, the United States Court of Appeals for the Fourth Circuit has explained that:

Under § 2244(d)(1)(A)-(D), the one-year limitation period begins to run from the latest of several potential starting dates:

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- (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.

Green v. Johnson, 515 F.3d 290, 303-04 (4th Cir. 2008) (emphasis added).

Turning first to subparagraph (A), a petitioner's one-year limitation period ordinarily commences under that provision on "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 Court must examine when direct review (or the time for seeking direct review) of Petitioner's underlying conviction ended. Here, Petitioner pursued a direct appeal, with the North Carolina Supreme Court denying review on December 6, 2007. Because Petitioner did not seek review from the United States Supreme Court, her conviction became final when her time to do so expired in March of 2008. Petitioner's time to file in this Court under subparagraph (A) began to run on that date and expired a year later in March of 2009. It is true that properly filed attempts at collateral relief in the state courts toll the federal habeas deadline for "the entire period of state post-conviction proceedings, from initial filing to final disposition by the highest court (whether decision on the merits, denial of certiorari, or expiration of the period of time to seek further appellate review)." Taylor v. Lee, 186 F.3d 557, 561 (4th Cir. 1999). However, Petitioner's first attempt at collateral relief in the state

courts came in 2021, more than a decade after her time to file in this Court expired. State filings made after the federal limitations period expires do not restart or revive the filing period. See Minter v. Beck, 230 F.3d 663, 665 (4th Cir. 2000). Petitioner's claims are out of time under subparagraph (A) and are time-barred unless they are timely under another provision.

Petitioner makes no arguments regarding subparagraphs (B) or (D) but does appear to claim that subparagraph (C) provides her more time to file. However, she does not cite to any retroactive Supreme Court case but instead cites to changes related to a federal firearms statute, 18 U.S.C. § 924(c). That statute is not a Supreme Court case and, in any event, cannot affect state sentences. Therefore, it does not affect her case and subparagraph (C) does not apply to provide her more time to file.

Petitioner also raises what appears to be a request for equitable tolling, which the Supreme Court has ruled applicable in this context, Holland v. Florida, 560 U.S. 631, 649 (2010). Equitable tolling may apply when a petitioner "shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." Id. (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)) (emphasis added). Petitioner states that her Petition should be deemed timely filed because, in August of 2012, a law firm took her case pro bono, but the attorney who took it died before securing any relief. This argument also does not render the Petition timely because, as with Petitioner's Motion for Appropriate Relief, any events in 2012 occurred well after the statute of limitations already expired in 2009. They cannot somehow restart the statute of limitations, and Petitioner has not shown extraordinary circumstances that precluded her from filing by March 2009. Petitioner also submitted letters showing her efforts to reach out to North

Carolina Prisoner Legal Services in September 2009 and thereafter [Doc. #15], but again these efforts are all after the statute of limitations had expired, and Petitioner has not shown due diligence or extraordinary circumstances to support equitable tolling prior to the expiration of the statute of limitations in March 2009. Petitioner's claims are well out of time, Respondent's Motion to Dismiss should be granted, and the Petition should be dismissed.

Also pending on the docket are a Motion [Doc. #12] and Brief [Doc. #13] filed by Petitioner in which she continues to argue the merits of her claims and seeks the granting of her Petition. She puts forth no argument rendering her claims timely and this Motion should be denied. Petitioner also filed a Motion [Doc. #14] seeking an appointment of counsel. That Motion will be denied in light of the recommendation that the case be dismissed.

IT IS THEREFORE ORDERED that Petitioner's Motion [Doc. #14] seeking an appointment of counsel is denied.

IT IS RECOMMENDED that Respondent's Motion to Dismiss [Doc. #8] be granted, that Petitioner's Motion [Doc. #12] seeking to have her Petition granted be denied, that the Petition [Doc. #1] be dismissed, that this action be dismissed, and that, there being no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability not issue.

This, the 14th day of July, 2022

/s/ Joi Elizabeth Peake
United States Magistrate Judge

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