CLD-083

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **23-3173**

SEAN MOFFITT, Appellant

VS.

WARDEN USP-1 COLEMAN; ET AL.

(W.D. Pa. Civ. No. 2:23-cv-00685)

Present: KRAUSE, FREEMAN, and SCIRICA, Circuit Judges

Submitted is Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

ORDER

The request for a certificate of appealability is denied because jurists of reason would not debate the District Court's decision to dismiss the petition for writ of habeas corpus. See 28 U.S.C. § 2253; Slack v. McDaniel, 529 U.S. 473, 484 (2000). More specifically, reasonable jurists would agree that the District Court lacked jurisdiction over the petition because, at the time that Appellant filed his petition, he was not "in custody" on the conviction that he challenged. See 28 U.S.C. § 2254(a); Maleng v. Cook, 490 U.S. 488, 490-92 (1989); see also Lackawanna Cty. Dist. Att'y v. Coss, 532 U.S. 394, 401-03 (2001); Orie v. Sec'y Pa. Dep't of Corr., 940 F.3d 845, 850 (3d Cir. 2019) ("A federal court has habeas jurisdiction only if the petitioner is 'in custody.'"); Mays v. Dinwiddie, 580 F.3d 1136, 1139 (10th Cir. 2009) ("The custody requirement is jurisdictional.").

By the Court,

s/Arianna J. Freeman
Circuit Judge

Dated: April 1, 2024

CJG/cc: Sean Moffitt
Laura S. Irwin, Esq.
Susan E. Affronti, Esq.
Ronald Eisenberg, Esq.
Ronald M. Wabby, Jr., Esq.

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

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

SEAN MOFFITT,	)	
	)	
Petitioner,	)	Civil Action No. 23-685
	)	
v.	)	District Judge Christy Criswell Wiegand
	)	Magistrate Judge Maureen P. Kelly
WARDEN USP-1 COLEMAN;	)	
PENNSYLVANIA ATTORNEY GENERAL;	)	Re: ECF No. 8
and DISTRICT ATTORNEY OF	)	
ALLEGHENY COUNTY,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (the "Petition"), ECF No. 8, be dismissed, *sua sponte*, pursuant to Rule 4 of the Rules Governing Section 2254 Cases as untimely. It is further recommended that a certificate of appealability be denied.

II. REPORT

Sean Moffitt ("Petitioner") is a federal prisoner proceeding *pro se* in this matter. In his Petition, he seeks federal habeas relief from his 2003 conviction of drug charges under state law in the Court of Common Pleas of Allegheny County, Pennsylvania, at Case No. CP-02-CR-2760-2001. ECF No. 8 at 1.

A. Relevant Procedural History

According to the Petition, on February 25, 2003, Petitioner was convicted of possession of a controlled substance and possession with intent to distribute after pleading guilty. Id. He was

sentenced to 18-26 months' imprisonment on the same date. Id.; Docket, Com. v. Moffitt, No. CP-02-CR-2760-2001 (C.C.P. Allegheny County).[1]

Petitioner does not allege, and the state court docket does not indicate, that Petitioner filed a direct appeal from his conviction.

To the contrary, the docket appears quiet from March 3, 2003 – when a forfeiture order and some unspecified "post trial activities" occurred – until April 25, 2017, when Petitioner filed a motion for appointment of counsel connected with a petition for writ of error *coram nobis* in the state trial court.[2] Docket, Com. v. Moffitt, No. CP-02-CR-2760-2001. Thereafter, the motion was denied by the state trial court on July 24, 2017, and reconsideration was denied on March 11, 2019. Id. Petitioner filed an appeal to the Pennsylvania Superior Court on March 25, 2019. Id. The Superior Court quashed the appeal on February 28, 2020. Docket, Com. v. Moffitt, No. 614 W.D.A. 2019 (Pa. Super. Ct. filed Mar. 25, 2019).[3] The case was remitted to the trial court on May 14, 2020. Id.

The state trial court issued a Notice of Intent to Dismiss on July 17, 2020. Docket, Com. v. Moffitt, No. CP-02-CR-2760-2001. Petitioner filed another petition for writ of error *coram nobis*

---

[1] Available at https://ujsportal.pacourts.us/Report/CpDocketSheet?docketNumber=CP-02-CR-0002760-2001&dnh=hyxa4QV2%2FaZZbwQAPooNkw%3D%3D (last visited Sept. 29, 2023)).

[2] Petitioner does not mention this in the Petition, and instead discuses only a state habeas petition filed on August 5, 2020, and appeal therefrom. ECF No. 8 at 3-4 and 6.

[3] Available at https://ujsportal.pacourts.us/Report/PacDocketSheet?docketNumber=614%20WDA%202019&dnh=btRzpzVagbO4lbiIBXDMmQ%3D%3D (last visited Sept. 29, 2023).

on August 5, 2020.[4] The state trial court docket indicates that the trial court issued an order dismissing a Post Conviction Relief Act ("PCRA") petition on March 9, 2021.[5] Id.

Petitioner filed a notice of appeal on September 7, 2021. Id. The appeal was dismissed by the Superior Court on August 11, 2022, due to Petitioner's failure to file a brief. Docket, Com. v. Moffitt, No. 1109 WDA 2021 (Pa. Super. Ct. filed Mar. 25, 2019).[6] The Pennsylvania Supreme Court denied *allocator* on February 7, 2023. Docket, Com. v. Moffitt, No. 242 WAL 2022, (Pa. filed Sept. 8, 2022).[7]

This Court takes judicial notice of the aforementioned public state court documents.

This Court received the instant federal habeas Petition on April 26, 2023. ECF No. 1. Petitioner did not date the Petition. Id. at 15. The envelope in which the Petition was mailed is postmarked April 20, 2023. ECF No. 1-1 at 1. Accordingly, the effective date of filing pursuant to the prisoner mailbox rule appears to be April 20, 2023. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998) ("we hold that a pro se prisoner's habeas petition is deemed filed at the moment he delivers it to prison officials for mailing to the district court.").

In the Petition, Petitioner raises the following three claims for relief.

> GROUND ONE: The hearing court was in error when it refused to appoint counsel.

---

[4] Presumably this is the state habeas petition referenced in the instant Petition. ECF No. 8 at 3.

[5] See 42 Pa. C.S.A. § 9541, *et seq*. While not explicitly stated on the docket, it appears that the trial court began treating Petitioner's request for a writ of error *coram nobis* as a PCRA petition sometime after his initial appeal was quashed.

[6] Available at https://ujsportal.pacourts.us/Report/PacDocketSheet?docketNumber=1109%20WDA%202021&dnh=tILIJJWQaelaHWpwgIr3Xg%3D%3D (last visited Sept. 29, 2023).

[7] Available at https://ujsportal.pacourts.us/Report/PacDocketSheet?docketNumber=242%20WAL%202022&dnh=RmcnKcFAWFEDWmjEShDanw%3D%3D (last visited Sept. 29, 2023)).

> (a) Supporting facts
>
> Pennsylvania Rules of Criminal Procedure 904 make it a "Right" that the defendant is appointed counsel.

ECF No. 8 at 5. This appears to relate to Petitioner's 2017 motion with respect to his request for a writ of error *coram nobis*.

> GROUND TWO: Denial of Petition for writ of error Coram Nobis.
>
> (a) Supporting facts
>
> Trial Court did not give an adequate inquiry during the plea colloquy in violation of Pa. R. Crim. P. 590 and the U.S. Constitution.

Id. at 7.

> GROUND THREE: Trial Counsel was ineffective when he failed to ensure there was an adequate understanding of the plead [*sic*]
>
> (a) Supporting facts
>
> Counsel did not ensure there was an adequate understanding of the plead [*sic*]

Id. at 8.

B. Rule 4 of the Rules Governing Section 2254 Cases

Pursuant to Rule 4 of the Rules Governing Section 2254 cases, this Court may dismiss the Petition if it plainly appears on its face that the Petitioner is not entitled to federal habeas relief.

Rule 4 provides in relevant part that:

> If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

In interpreting Rule 4, the Advisory Committee Notes to Rule 4 observe that:

> 28 U.S.C. § 2243 requires that the writ shall be awarded, or an order to show cause issued, "unless it appears from the application that the applicant or person detained is not entitled thereto." Such consideration may properly encompass any exhibits attached to the

> petition, including, but not limited to, transcripts, sentencing records, and copies of state court opinions. The judge may order any of these items for his consideration if they are not yet included with the petition.

In addition to ordering state court records and/or opinions, a federal habeas court may, under Rule 4, take judicial notice of those state court records and/or state court opinions as well as its own court records. See, e.g., Barber v. Cockrell, No. 01–CV–0930, 2002 WL 63079, at *1 n.4 (N.D. Tex. Jan. 8, 2002) (in a Rule 4 case, the court took judicial notice of its own records of a prior habeas petition filed by the petitioner); United States ex rel. Martin v. Gramley, No. 98 C 1984, 1998 WL 312014, at *1 (N.D. Ill. June 3, 1998) (in a Rule 4 summary dismissal, the court took "judicial notice of the opinion of the Illinois Appellate Court in this case.")

C. The AEDPA Statute of Limitations.

The first consideration in reviewing a federal habeas corpus petition is whether the petition was timely filed within the applicable statute of limitations. In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, which established, generally, a strict one-year statute of limitations for the filing habeas petitions pursuant to Section 2254. The applicable portion of the statute is as follows:

> (d)(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;
>
> (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.
>
> (2) The 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 not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d).

The United States Court of Appeals for the Third Circuit has held that the statute of limitations set out in Section 2244(d) must be applied on a claim by claim basis. Fielder v. Varner, 379 F.3d 113, 122 (3d Cir. 2004), cert. denied sub nom. Fielder v. Lavan, 543 U.S. 1067 (2005). Thus, in analyzing whether a petition for writ habeas corpus has been timely filed under the one-year limitations period, a federal court must undertake a three-part inquiry.

First, the court must determine the "trigger" date for the individual claims raised in the petition. Typically, this is the date that the petitioner's direct review concluded and the judgment became "final" for purposes of triggering the one-year period under Section 2244(d)(1)(A).

Second, the court must determine whether any "properly filed" applications for post-conviction or collateral relief were pending during the limitations period that would toll the statute pursuant to Section 2244(d)(2).

Third, the court must determine whether any of the other statutory exceptions or equitable tolling should be applied on the facts presented. See, e.g., Munchinski v. Wilson, 807 F. Supp. 2d 242, 263 (W.D. Pa. 2011), aff'd, 694 F.3d 308 (3d Cir. 2012) (citing Nara v. Frank, No. 99-5, 2004 WL 825858, at *3 (W.D. Pa., Mar. 10, 2004)).

In Holland v. Florida, 560 U.S. 631 (2010), the United States Supreme Court affirmed the availability of equitable tolling of the AEDPA's one year statute of limitations under appropriate circumstances. In its opinion, the Supreme Court first underscored that the one year statute of limitations in the AEDPA was not jurisdictional, and "does not set forth 'an inflexible rule requiring dismissal whenever' its 'clock has run.'" Id. at 645 (quoting Day v. McDonough, 547 U.S. 198, 208 (2006)). Given that habeas corpus is, at its heart, an equitable form of relief, and with no well-defined congressional intent to the contrary, the Supreme Court concluded that it is proper, under the principles of equity, to toll the statutory one year period for filing a petition under Section 2254 in certain cases. Holland, 560 U.S. at 646-47.

In order for a delay in filing a habeas petition to qualify for equitable tolling, a petitioner must show "'(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." Id. at 649 (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). "Mere excusable neglect is not sufficient." Miller v. New Jersey State Dep't of Corrs., 145 F.3d 616, 619 (3d Cir. 1998). Additionally, "[i]n non-capital cases, attorney error, miscalculation, inadequate research, or other mistakes have not been found to rise to the 'extraordinary' circumstances required for equitable tolling." See Fahy v. Horn, 240 F.3d 239, 244 (3d Cir. 2001) (citing cases).

While Holland did not involve an appeal from a decision of a district court within the Third Circuit, it did affirm the practice of courts within this circuit of granting equitable tolling in cases where the above-mentioned conditions have been met. See, e.g., LaCava v. Kyler, 398 F.3d 271, 275-76 (3d Cir. 2005). Importantly, the United States Court of Appeals for the Third Circuit has emphasized that "[e]quitable tolling is appropriate when 'the principles of equity would make the rigid application of a limitation period unfair[.]'" Id. at 275 (quoting Miller, 145 F.3d at 618).

Additionally, it should be applied only where it is "demanded by sound legal principles as well as the interests of justice." Id. at 275 (internal quotes and citations omitted).

The statute of limitations also may be tolled if a petitioner establishes that he is actually innocent of the charges. McQuiggan v. Perkins, 569 U.S. 383, 398-99 (2013) (recognizing an actual innocence exception to the AEDPA's statute of limitations). See also Schlup v. Delo, 513 U.S. 298, 329 (1995) (setting forth the actual innocence standard).

1. Ground Three, and Ground Two to the extent that it implicates Petitioner's guilty plea colloquy, trigger on April 2, 2003.

For the purposes of this Report, and giving Petitioner every benefit of the doubt, this Court presumes that Petitioner's trial ended on March 3, 2003 – that date on which the docket indicates that the last unspecified "post trial activities" were concluded by the trial court. Docket, Moffit, No. CP-02-CR-2760-2001. The record does not indicate that Petitioner filed a direct appeal from his conviction. Therefore, his conviction became final, at the latest, on April 2, 2003 – 30 days after all proceedings at the trial court level concluded. Pa. R.A.P. 903.

Ground Three relates to conduct that took place at the trial court level. The same is true as to Ground Two, to the extent that it implicates Petitioner's guilty plea colloquy. Thus, each trigger when Petitioner's conviction became final - April 2, 2003.

2. Ground Three, and Ground Two to the extent that it implicates Petitioner's guilty plea colloquy, are time-barred.

As stated above, the trigger date for Ground Three, and Ground Two to the extent that it implicates Petitioner's guilty plea colloquy, is April 2, 2003. The clock on the AEDPA's one-year statute of limitations began running on that date. A habeas Petition raising these grounds was due within one year from that date – or on or before April 2, 2004. But the Petition was not effectively

filed until April 20, 2024 – nearly two decades later. The Petition is facially untimely with respect to these grounds.

Additionally, the public record shows that no intervening post conviction relief petition was pending during that period of time. Petitioner also has not demonstrated any reasons to equitably toll the statute of limitations clock, nor has he demonstrated actual innocence. Accordingly, Ground Three, and Ground Two to the extent that it implicates Petitioner's guilty plea colloquy, are barred by the statute of limitations, and should be dismissed.

D. Ground One, and Ground Two to the Extent that It Attacks Decisions by the PCRA Trial Court, are Not Cognizable as Federal Habeas Claims.

Ground One – which alleges error by the PCRA trial court in not appointing counsel for Petitioner under state law in his state collateral proceeding – and at least part of Ground Two – to the extent that it is based directly on the decision of the PCRA trial court to deny relief – attack decisions made by the PCRA trial court pursuant to state law. But errors of state law cannot serve as a basis for granting the writ of habeas corpus. Hassine v. Zimmerman, 160 F.3d 941, 954 (3d Cir. 1998) ("The federal role in reviewing an application for habeas corpus is limited to evaluating what occurred in the state or federal proceedings that actually led to the petitioner's conviction; what occurred in the petitioner's collateral proceeding does not enter into the habeas calculation. . . . Federal habeas power is 'limited ... to a determination of whether there has been an improper detention by virtue of the state court judgment.'"); Lambert v. Blackwell, 387 F.3d 210, 247 (3d Cir. 2004) ("alleged errors in collateral proceedings ... are not a proper basis for habeas relief from the original conviction."). See also Shinn v. Ramirez, 596 U.S. ____, 142 S. Ct. 1718, 1735 (2022) (no federal constitutional right to counsel in state postconviction proceedings).

Accordingly, Ground One and any part of Ground Two attacking decisions made by the PCRA trial court pursuant to state law, do not afford bases for federal habeas relief, and should be dismissed.

E. Certificate of Appealability.

Finally, a certificate of appealability should be denied because jurists of reason would not find it debatable whether Petitioner's ground for relief were barred by the AEDPA's one-year statute of limitations, or otherwise failed to provide a basis for habeas relief. See, e.g., Slack v. McDaniel, 529 U.S. 473 (2000).

III. CONCLUSION

For the foregoing reasons, it is respectfully recommended the Petition be dismissed, *sua sponte*, pursuant to Rule 4 of the Rules Governing Section 2254 Cases. It is further recommended that a certificate of appealability be denied.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rule 72.D.2, the parties are permitted to file written objections in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Objections are to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to timely file objections will waive the right to appeal. Brightwell v. Lehman, 637 F.3d 187, 193 n. 7 (3d Cir. 2011). Any party opposing objections may file their response to the objections within fourteen (14) days thereafter in accordance with Local Civil Rule 72.D.2.

Dated: September 29, 2023

BY THE COURT:

MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc Hon. Christy Criswell Wiegand
United States District Judge

Sean Moffitt
09910-068
Coleman I
U.S. Penitentiary
Inmate Mail/Parcels
P.O. Box 1033
Coleman, FL 33521

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

SEAN MOFFITT,

Plaintiff,

v.

WARDEN USP-1 COLEMAN, PENNSYLVANIA ATTORNEY GENERAL, DISTRICT ATTORNEY OF ALLEGHENY COUNTY,

Defendants.

2:23-CV-00685-CCW-MPK

MEMORANDUM ORDER

This case has been referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(l)(A) and (B), and Local Rule of Civil Procedure 72.

On September 29, 2023, the Magistrate Judge issued a Report, ECF No. 9, recommending that Petitioner Sean Moffitt's Petition for a Writ of Habeas Corpus, ECF No. 8, be dismissed *sua sponte* and a certificate of appealability be denied. Service of the Report and Recommendation ("R&R") was made on the parties, and Mr. Moffitt has filed Objections. *See* ECF No. 12.

After a *de novo* review of the pleadings and documents in the case, together with the R&R and the Objections thereto, it is hereby ORDERED that the Petition for a Writ of Habeas Corpus, ECF No. 8, is **dismissed without prejudice**, no certificate of appealability will be issued, and the R&R, ECF No. 9, is adopted as the Opinion of the District Court.