

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CHESTER CARTER, JR.,)	
)	
<i>Petitioner</i>)	
)	
v.)	<i>Civil No. 00-15-P-C</i>
)	
STATE OF MAINE and)	
WARDEN, Maine State Prison,)	
)	
<i>Respondents</i>)	

RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS

Chester Carter, Jr., confined to the Maine State Prison in Thomaston, Maine, seeks to challenge two sentences imposed upon him in the Maine Superior Court in July 1995: a twenty-year sentence for vehicular manslaughter and a concurrent five-year sentence for aggravated OUI. Petition for Writ of Habeas Corpus (“Original Petition”) (Docket No. 1); Petition Under 28 USC § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 3) (together, “Petition”).¹ The State argues *inter alia* that the Petition was untimely filed. Response to Petition

¹Inasmuch as the Original Petition was not filed on the form to be used by prisoners in section 2254 cases, I ordered the petitioner to refile it using the designated form. Order (Docket No. 2). He did so but sought leave to incorporate the original petition. Motion To Incorporate Original Petition With Form Petition (Docket No. 4). The State was ordered to respond to both petitions. Order To Answer (Docket No. 5).

for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, etc. (“Response”) (Docket No. 7) at 5-8.

I agree and accordingly recommend that the Petition be denied.

I. Background

On December 8, 1994 the petitioner was indicted in the Maine Superior Court (Washington County) on four charges stemming from operation of a motor vehicle. Indictment for Violation of 17-A M.R.S.A. Section 203(1)(A), *State v. Carter*, Criminal No. 94-372 (Me. Super. Ct.) (“Indictment”), attached to Docket, *State v. Carter*, Criminal No. 94-372 (Me. Super. Ct.) (“Docket”), filed with Response.² The petitioner pleaded guilty on July 13, 1995 to Count I, charging manslaughter pursuant to 17-A M.R.S.A. § 203(1)(A), and Count II, charging aggravated OUI pursuant to 29 M.R.S.A. § 1312-B(2-A). Judgment and Commitment, *State v. Carter*, Criminal No. 94-372 (Me. Super. Ct.) (“Judgment”), attached to Docket. The remaining counts were dismissed. Dismissal, *State v. Carter*, Criminal No. 94-372 (Me. Super. Ct.), attached to Docket. He was sentenced that day to twenty years in prison on Count I and five years on Count II, the latter to be served concurrently with the former. Judgment. Also on that day counsel for the petitioner filed an application to the Law Court to allow an appeal of sentence. Application to the Law Court To Allow an Appeal of Sentence, *State v. Carter*, Criminal No. 94-372 (Me. Super. Ct.), attached to Docket. Leave to appeal was denied on November 27, 1995. Order, *State v. Carter*, Docket No. SRP-95-64 (Me. Nov. 27, 1995), filed with Response.

On June 20, 1997 the petitioner filed a petition for post-conviction review in the Maine

²The petitioner also was indicted on four ancillary counts reciting prior OUI and habitual-offender convictions. Indictment.

Superior Court (Washington County). Petition for Post-Conviction Review, *Carter v. State*, Criminal No. 97-153 (Me. Super. Ct.), attached to Docket, *Carter v. State*, Criminal No. 97-153 (Me. Super. Ct.) (“PCR Docket”), filed with Response. On March 10, 1999, following an evidentiary hearing, the petition was denied. Decision on Petition for Post-Conviction Review, *Carter v. State*, Criminal No. 97-153 (Me. Super. Ct. Mar. 10, 1999), attached to PCR Docket. No appeal was taken therefrom. *See* PCR Docket; Original Petition at [2]. The instant petition was filed with the clerk’s office on January 10, 2000. Original Petition at [1].

II. Discussion

In 1996 Congress, through the vehicle of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), imposed for the first time a limitations period on the filing of habeas petitions as well as on motions filed pursuant to 28 U.S.C. § 2255. *See Rogers v. United States*, 180 F.3d 349, 353 & n.8, 355 (1st Cir. 1999). AEDPA requires the filing of habeas petitions within one year of the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). “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)(2).

The State concedes that inasmuch as the petitioner’s conviction became final prior to the enactment of AEDPA on April 24, 1996, he was entitled to a one-year grace period from that date within which to file a habeas petition. Response at 6-7; *see also Gaskins v. Duval*, 183 F.3d 8, 9 (1st Cir. 1999); *Rogers*, 180 F.3d at 355 (grace period ended on April 24, 1997). The State further acknowledges that the grace period is tolled during the pendency of a petitioner’s post-conviction review proceedings. Response at 7; *see also* 28 U.S.C. § 2244(d)(2); *Gaskins*, 183 F.3d at 9. However, the State observes that in this case no state post-conviction review proceeding was pending during the entirety of the grace period, the petitioner having first filed for state post-conviction review on June 20, 1997, approximately two months after the grace period lapsed. Response at 7-8. No habeas petition was filed until January 2000, more than two years after the grace period ended. *Id.* at 7.

Section 2244(d)(2) on its face provides merely that time spent in state post-conviction review proceedings is not countable toward the period of limitation. It neither contemplates nor hints that the filing of subsequent post-conviction review proceedings could revive or in any other way extend a lapsed period of limitation. Not surprisingly, the Court of Appeals for the Eighth Circuit in what appears to be the sole published case addressing the question came to this

conclusion. *Jackson v. Dormire*, 180 F.3d 919, 920 (8th Cir. 1999) (noting that to allow petitioner “to return to state court and exhaust after the one-year statutory limitations period has expired would defeat the purpose of [AEDPA] to expedite federal habeas review”).”

The petitioner in his reply does not contest this point, instead attacking AEDPA on several constitutional grounds. Reply to Respondent’s Answer and Motion To Dismiss (“Reply”) (Docket No. 9) at 1-7. These arguments, while eloquent, are sufficiently unmoored from the realities of his case to fall short of presenting a justiciable controversy. The petitioner contends that AEDPA would rob even an innocent prisoner sentenced to life in prison of redress in court — but he does not himself profess his innocence. *See id.* at 2, 5-6. He argues that section 2244(d)(1)(D) should be construed to apply not only to those unable to uncover the “factual predicate” of their claims in a timely fashion but also to those unable to uncover the “legal predicate”; however, he does not assert that he personally was unable to do so. *See id.* at 4-5.³ The petitioner lacks standing to assert such abstract rights. *See, e.g., Adams v. Watson*, 10 F.3d 915, 918 n.7 (1st Cir. 1993) (to have standing, litigant must *inter alia* assert own legal rights and interests, not those of third parties).

The petitioner finally asserts that the term “due diligence” in section 2244(d)(1)(D) is unconstitutionally vague and overbroad — contentions that could be construed as facial, rather than “as applied,” attacks. *See Reply* at 5. Both challenges nonetheless fail. The doctrine of facial overbreadth is inapposite, applying only in situations in which a statute is contended to

³Courts in any event have rebuffed attempts to excuse late habeas filings based on mere ignorance of the law. *See, e.g., Felder v. Johnson*, 204 F.3d 168, 171-72 (5th Cir. 2000).

restrict freedom of speech. *See, e.g., Alexander v. United States*, 509 U.S. 544, 555 (1993) (“The ‘overbreadth’ doctrine, which is a departure from traditional rules of standing, permits a defendant to make a facial challenge to an overly broad statute restricting speech, even if he himself has engaged in speech that could be regulated under a more narrowly drawn statute.”). Similarly, unless First Amendment interests are threatened, a vagueness challenge must be “examined in light of the facts of the case at hand” *Love v. Butler*, 952 F.2d 10, 13 (1st Cir. 1991) (citations and internal quotation marks omitted). Inasmuch as the plaintiff supplies no such facts, his vagueness argument founders.

III. Conclusion

For the foregoing reasons, I recommend that the petitioner’s habeas corpus petition be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.

Dated this 18th day of April, 2000.

*David M. Cohen
United States Magistrate Judge*

ADMIN
U.S. District Court District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-15

CARTER v. MAINE, STATE OF, et al

Filed: 01/10/00

Assigned to: JUDGE GENE CARTER

Demand: \$0,000

Nature of Suit: 530

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

CHESTER CARTER, JR

CHESTER CARTER, JR plaintiff [COR LD NTC pse] [PRO SE]

MAINE STATE PRISON

BOX A

THOMASTON, ME 04861

v.

MAINE, STATE OF

CHARLES K. LEADBETTER defendant 289-3661 [COR LD NTC]

ASSISTANT ATTORNEY GENERAL

STATE HOUSE STATION 6

AUGUSTA, ME 04333

626-8800

WARDEN, MSP

CHARLES K. LEADBETTER defendant (See above) [COR LD NTC]

ROBERT CHESTNUT

ROBERT CHESTNUT Interested Party [term 02/23/00] [COR LD NTC pse] [PRO SE]

MAINE CORRECTIONAL CENTER

P.O. BOX 250

SOUTH WINDHAM, ME 04082