

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DAVID JACK,)	
)	
Petitioner)	
)	
v.)	Civil 99-120-B
)	
JEFFREY D. MERRILL, WARDEN,)	
)	
Respondent)	

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

Pending before the Court is David Jack’s Petition for Writ of Habeas Corpus brought pursuant to 28 U.S.C. § 2254 (1999).

Factual Background and Procedural History

On January 18, 1996, a jury of the Superior Court of Penobscot County found David Jack (“Jack”) guilty of aggravated assault. See State of Maine v. Jack, CR-95-625 (Me. Super. Ct. Pen. Cty., 1996). On March, 26, 1996, Presiding Judge Margaret J. Kravachuk sentenced Jack to five years in prison, all but four of which were suspended, and four years probation, a period which was to commence immediately. Currently imprisoned at the Maine Correctional Institution in Warren, Maine, the State Attorney General’s office projects that his approximate release date is September 3, 2000. Jack did not appeal this judgment or the sentence.

On June 14, 1996, Jack filed a Petition for Post-Conviction Review in the Maine Superior Court of Penobscot County, pursuant to 15 Me. Rev. Stat. Ann. §§ 2121-2132 (1998). Jack sought relief based on a claim of ineffective assistance of counsel at his criminal trial. Jack claimed that his trial counsel’s pre-trial investigation was deficient in two ways. First, he claimed that his counsel failed to hire a private investigator to track down potential witnesses,

despite court-awarded funds for such purposes. Second, Jack argued that his counsel failed to inquire into Jack's psychological competency and failed to pursue an insanity defense, despite Jack's request that his counsel explore such a defense. On November 25, 1997, Judge Andrew M. Mead denied Jack's petition in a three page opinion. See Jack v. State of Maine, CR-96-380 (Me. Super. Ct. Pen Cty., 1997). On December 12, 1997, Jack filed a timely notice of appeal in which he sought the Maine Supreme Judicial Court's review of Judge Mead's final judgment. On February 11, 1998, Justice Saufly issued an order denying a certificate of probable cause to proceed with an appeal.

On April 13, 1999, Jack filed second state Petition for Post-Conviction Review, in which he reasserted the ineffectiveness of his trial counsel. Since this issue was raised at his prior review, Judge S. Kirk. Studstrup summarily dismissed Jack's second Petition on April 21, 1999. Jack gave this habeas petition to prison officials on April 28, 1999, and it was filed on May 4, 1999.

Discussion

In his Petition for Writ of Habeas Corpus, Jack asserts four grounds upon which he seeks relief. First, he alleges that his conviction was obtained through a coerced confession since he was never read his Miranda rights. Second, he claims that his conviction was the result of an unconstitutional search and seizure. Third, he argues that his conviction was obtained by a violation of his privilege against self-incrimination. Fourth, he once again asserts that he was denied effective assistance of counsel. The thrust of the government's response is that Jack's petition is time-barred.

The Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244(d), ("AEDPA")

provides, in relevant part, that:

(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. . . .

(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.

Under Maine Rules of Criminal Procedure, Jack had twenty days to appeal to the Maine Supreme Judicial Court for direct review of his conviction. See Me. R. Crim. P. 37(c).

Therefore, under §2244(d)(1)(A), the judgment against Jack became "final" on April 15, 1996, the "expiration of the time for seeking [direct] review."

Because of due process concerns for petitioners, like Jack, whose habeas applications were filed after the AEDPA was enacted on April 24, 1996, but whose criminal convictions were "final" prior to the AEDPA's applicability, courts have held that the one year limitations period for these petitioners began running on April 25, 1996, rather than on the prior date when their conviction became final. See Gaskins v. Duval, 1999 WL 447129, No. 97-2051, at *1 (1st Cir. July 7, 1999)(agreeing with the rest of the Federal Circuit Court of Appeals in providing this one year grace period).

Jack's petition, however, was not time-barred as of April 25, 1997 because he had filed for state post-conviction review on June 14, 1996. This filing tolled the limitations period only fifty days after his conviction became final. This Court has repeatedly held that a petitioner's one

year grace period to file a habeas petition under the AEDPA is tolled under §2244(d)(2) where the petitioner has properly filed for state post-conviction review. See Bancroft v. Merrill, Civ. No. 99-0017-B (Rec. Decision, Mar. 25, 1999, aff'd April 20, 1999)(citing Pottios v. Merrill, Civ. No. 98-0188-B (Rec., Nov. 25, 1998, aff'd Dec. 15, 1998); Leone v. Merrill, Civ. No. 98-0038-B (Rec. Decision, May 21, 1998, aff'd June 25, 1998)). Jack's state review did not become final until February 11, 1998, when Justice Saufly of the Maine Supreme Judicial Court issued an order denying a certificate of probable cause to proceed with an appeal of the Superior Court's denial of Jack's petition for post-conviction review. The limitations clock then resumed, and passed the one-year mark well before Jack's habeas petition was filed on May 4, 1999. His second state post-conviction review proceeding, which lasted from April 13, 1999 until April 21, 1999, took place after the limitations period had run and has no bearing on this determination.

Since Jack's petition is time-barred, his Petition for Writ of Habeas Corpus is DENIED.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 3rd day of September, 1999.