UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Shuckra	:	
	:	
v.	:	**No. 3:02cv583(JBA)**
	:	**PRISONER**
Armstrong	:	

Ruling on Respondent's Motion to Dismiss [Doc. #7]

The petitioner, Christopher Shuckra ("Shuckra"), brings this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondent has moved to dismiss on the ground that the petition is barred by the statute of limitations. For the reasons set forth below, the motion to dismiss is DENIED.

I. Background

Shuckra was arrested on August 28, 1992 and charged with attempted murder, attempted assault in the first degree, burglary in the first degree, assault in the second degree, and violation of probation. On January 27, 1993, he pled nolo contendere to charges of attempted assault in the first degree and burglary in the third degree, and admitted a violation of probation. On August 20, 1993, he was sentenced to a total effective term of imprisonment of fifteen years. No direct appeal of his conviction was filed.

On September 14, 1994, Shuckra submitted a pro se

petition for writ of habeas corpus ("the 1994 state habeas petition")[1] to the Connecticut Superior Court. In the petition, which was submitted on a pre-printed form, Shuckra circled "guilty plea not voluntary," "terms of plea bargain not followed," "ineffective assistance of counsel," and "mental state at plea or trial was:" with Shuckra filling "taking psychotrophic [sic] medication" into the blank. In the section of the form titled "facts and details supporting your claim," Shuckra wrote:

> I was initially represented by PD Yvonne Rodriguez-Schack and then by Atty Stawicki. At the time I retained Atty Stawicki I was told it was too late to re-open plea negotiations. I was also taking medication (psychotrophic) at the time of my plea. I would like the court to allow me to take back my guilty [sic] due to violation of the plea agreement with the state.

Subsequently represented by appointed counsel, Shuckra withdrew the 1994 state habeas petition on October 27, 1995.

In 1999, Shuckra submitted a second pro se petition for writ of habeas corpus ("the 1999 state habeas petition")[2] to the Connecticut Superior Court. While the petition is dated and notarized July 10, 1999, it was only filed with the court

---

[1][Doc. #7 Ex. H]

[2][Doc. #7 Ex. A]

on November 30, 1999.[3] On the pre-printed form petition, Shuckra checked "Guilty plea not entered voluntarily," "Attorney did not represent petitioner properly," and "Other," the blank for which he filled in "Conditions of plea agreement misrepresented by Atty Rodriguez-Schack. Guilty plea coerced." In his narrative statement of facts, Shuckra wrote that Attorney Rodriguez-Schack (hereinafter referred to as his trial attorney) repeatedly assured him that he would only serve one half of his prison sentence before being paroled, and that he specifically relied on this assurance in accepting the plea agreement.

Shuckra was thereafter represented by counsel, and an amended petition was filed. The amended petition restates substantially this same claim and avers that while Shuckra had filed previous petitions for writs of habeas corpus, the former petitions were "in regard to different issues other than this amended this [sic] Petition." The State's answer denied the substantive allegations of the amended petition, and specifically claimed that the 1994 state habeas petition "contain[ed] the same claims as the present Writ." [Doc. #7

[3]At the hearing on the 1999 state habeas petition, Shuckra testified that he wrote the petition in July and attempted to file it, but it was twice returned to him by a Judge of the Superior Court and was not filed until November. Transcript of 1999 state habeas proceeding [Doc. #7 Ex. G] ("Tr.") at 40.

Ex. A] at 14. After an evidentiary hearing, the petition was denied on the merits by written opinion on December 15, 2000, with no mention made in the court's ruling as to whether the claim had been presented in the 1994 state habeas petition. The denial was affirmed on appeal, and certification to the Connecticut Supreme Court was denied on May 15, 2002. See Shuckra v. Commissioner of Correction, 68 Conn. App. 904, cert. denied, 260 Conn. 926 (2002).

Shuckra filed the instant 28 U.S.C. § 2254 petition in this court on March 12, 2002.[4] In this petition ("the § 2254 petition"), Shuckra claims that: (1) his trial attorney was ineffective in that she erroneously told him he would serve only half his sentence, and (2) he was not given a Miranda warning prior to interrogation. The State has moved to dismiss the petition in its entirety, recounting the procedural history and arguing only:

> In the instant case, the petitioner was sentenced on April 20, 1993. He filed no direct appeal. His § 2254 petition is dated March 12, 2002 and was filed with this Court on April 2, 2002. As his petition was filed after April 24, 1997, the petitioner is

[4]March 12 is the date on which Shuckra signed the petition. Presumably, he gave this petition to correctional officials for mailing to the court that same day. A pro se prisoner complaint is deemed filed as of the date the prisoner gives the complaint to prison officials to be forwarded to the court. See Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993) (citing Houston v. Lack, 487 U.S. 266, 270 (1988)).

> barred by the AEDPA's one-year limit from obtaining federal habeas review or relief and it must be dismissed as untimely in accordance with 28 U.S.C. § 2244.

[Doc. #7] at 4. Shuckra filed no opposition to this motion, despite asking and having been granted an extension of time to research and prepare a response.

II. Discussion

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), significantly amended 28 U.S.C. §§ 2244, 2253, 2254, and 2255. Under the amended § 2244(d), a state prisoner has one year from the latest of several dates specified in subsection (1) to file a § 2254 petition, with a toll for time periods during which the petitioner has a properly-filed application for state collateral review as specified in subsection (2). The statute provides, in pertinent part:

> (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;

> * * *
>
> (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). For the purposes of determining finality under § 2244(d)(1)(A), where a petitioner's conviction would otherwise have became "final" before the April 24, 1996 effective date of AEDPA, petitioners are afforded a one year "grace period" from that effective date (that is, until April 24, 1997) in which to file their § 2254 petitions. See Ross v. Artuz, 150 F.3d 97, 102-03 (2d Cir. 1998).

The State argues that § 2244's one year limitation period began to run on the date Shuckra's conviction became final; that is, when the time for filing a direct appeal of his conviction expired, as provided in § 2254(d)(1)(A). As such finality occurred before AEDPA's effective date, the State contends that Shuckra was required to file this § 2254 petition on or before April 24, 1997. Because Shuckra had no state collateral attack pending between April 24, 1996 and April 24, 1997, the tolling provisions of § 2244(d)(2) would

be inapplicable if the State's position on finality were correct.

As to Shuckra's claim that his trial attorney promised him that a fifteen year sentence would result in only seven and one-half years of actual incarceration, the State's position is incorrect if Shuckra could not have discovered the error of his trial attorney's alleged advice until some point after his conviction became final. See Martin v. Jones, No. CA 00-0601-CB-C, 2000 WL 1369949 at *6 n.3 (S.D. Ala. Sept. 15, 2000) (limitations period on challenge to guilty plea did not begin to run until prisoner had learned that counsel had misinformed him about parole eligibility date: petitioner was "all too happy with his plea agreement on the assault case until learning sometime in March of 1998 that he would have to serve his entire 20-year assault sentence before becoming eligible for parole"); Wims v. United States, 225 F.3d 186 (2d Cir. 2000) (date on which petitioner discovered through research in the prison library that his attorney failed to file the appeal petitioner had requested, if reasonable, was the date from which the statute of limitations on petitioner's ineffective assistance of counsel claim would run) (applying analogous statute of limitations under § 2255). The limitation period of § 2244(d) begins to run from the latest

of the dates specified in § 2244(d)(1), and while finality of state conviction is one such date (§ 2244(d)(1)(A)), another date to be considered is "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence" (§ 2244(d)(1)(D)).

At the hearing on his 1999 state habeas petition, Shuckra testified that he did not become aware of the fallacy of his trial attorney's alleged advice until he was denied parole in July 1999:

> Q: [W]hen did you find out you weren't going to serve the seven and a half years? That you were going to have to serve more than seven and a half years?
>
> A: I appeared before the board of parole July 1st of 1999. And at that point the board denied my parole release and set a new hearing date for October, 2002.

Tr. at 55. This testimony is logically consistent with the procedural history of Shuckra's efforts at post-conviction relief, as Shuckra prepared and signed his 1999 state court habeas petition on July 10, 1999, a date immediately following his parole hearing. While Shuckra's 1994 state habeas petition appears to touch on a similar issue in that Shuckra checked the box on the pre-printed form for "terms of plea bargain not followed" and his narrative description in that

petition states that he "would like to take back my guilty [sic] due to violation of the plea agreement with the State," this sparse reference is an insufficient basis for concluding that Shuckra knew in 1994 that his trial attorney's alleged promise was erroneous.[5]

There is an insufficient showing that Shuckra's claim related to his trial attorney's alleged promise that Shuckra would serve only half his sentence is untimely under § 2244. While the record may be developed more fully on this point through factual discovery, the record as it stands now reflects that Shuckra only became aware of the factual predicate for this claim at his July 1, 1999 parole hearing. Thus, the limitations period of § 2244(d)(1) did not begin to run until that date. On July 10, 1999, Shuckra prepared and attempted to file his 1999 state habeas petition, which was accepted for filing on November 30, 1999, see supra note 3, and which remained "pending" for § 2244(d)(2) purposes until the Connecticut Supreme Court denied certification on May 15, 2002, see Hizbullahankhamon v. Walker, 255 F.3d 65, 70 (2d

[5]While this issue was apparently presented in the pleadings of the 1999 state habeas petition, with Shuckra alleging that no prior petitions encompassed the allegation and the State asserting that the 1994 state habeas petition encompassed the allegation, no resolution of the question was reached, as the state court ruled on the merits and did not address the issue in the court's written opinion.

Cir. 2001) (state post-conviction proceeding remains pending "from the time it is first filed until finally disposed of and further appellate review is unavailable under the particular state's procedures") (citations and quotations omitted). Inasmuch as the time period during which Shuckra's 1999 state habeas proceeding was pending is not counted toward the limitations period, see § 2244(d)(2),[6] Shuckra's claim was timely when this § 2254 proceeding was commenced in March 2002.[7]

Because at least one claim presented in Shuckra's § 2254 petition is timely (or at least has not been shown to be untimely), an interesting question is presented as to the

---

[6]The fact that the pending state habeas petition was Shuckra's second state habeas petition (the first being the 1994 state habeas petition) is of no import for § 2244(d)(2) purposes. Lovasz v. Vaughn, 134 F.3d 146 (3d Cir. 1998).

[7]Because the result is the same under either calculation, the Court need not determine whether Shuckra's 1999 state habeas petition was "properly filed" under § 2244(d)(2) as of July 1999 (when he prepared and attempted to file it) or as of November 1999 (when the state courts accepted it for filing). Cf. Artuz v. Bennett, 531 U.S. 4 (2000) (application is "filed" when it is "delivered to, and accepted by, the appropriate court officer for placement into the official record"; application is "properly filed" when "its delivery and acceptance are in compliance with the applicable laws and rules governing filings," such as rules specifying the form of the document, the time limits upon its delivery, the court and office in which it must be lodged, and the requisite filing fee) (internal citations and quotations omitted).

timeliness of the remaining claim.[8] The first sentence of § 2244(d)(1) speaks of a limitations period applicable to "an application for a writ of habeas corpus" (emphasis added), while § 2254(d)(1)(D), which defines the triggering date of such statute of limitation in this case, speaks of "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence" (emphasis added). This dichotomy between an "application" and a "claim," see Artuz v. Bennett, 531 U.S. 4, 9 (2000),[9] raises the question of whether a conclusion that Shuckra's "application" was timely under § 2244(d) necessitates a finding that all claims in the application are timely under § 2244(d). A leading treatise in this field concludes that it does:

---

[8]The remaining claim, based on an alleged Miranda violation, is not a claim about which "the factual predicate" was not known: Shuckra was the person being interrogated, and thus obviously knew that he was not given Miranda warnings. Thus, this claim does not fall within the scope of § 2244(d)(1)(D).

[9]"By construing 'properly filed application' to mean 'application raising claims that are not mandatorily procedurally barred,' petitioner elides the difference between an 'application' and a 'claim.' Only individual claims, and not the application containing those claims, can be procedurally defaulted under state law pursuant to our holdings in Coleman v. Thompson, 501 U.S. 722 (1991), and Wainwright v. Sykes, 433 U.S. 72 (1977), which establish the sort of procedural bar on which petitioner relies."

> Although AEDPA does not clearly resolve this issue, its language strongly suggests that the applicant has until the end of the latest of the claims' limitation periods to file the application. Thus, AEDPA provides that "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus" and "shall run from the latest of" the various possible times set forth in the statute. This language strongly suggests Congress' intention both that a single filing date apply to the entire "application," and that the deadline be determined from the "latest of" the various possible time periods set forth in the statute.

1 Randy Hertz & James S. Liebman, Federal Habeas Corpus Practice and Procedure (4th ed. 2001) § 5.2b at 267 (footnotes omitted, emphasis in original). Under the plain language of § 2244(d) and in light of the distinction throughout § 2244 between applications and claims, compare §§ 2244(b)(1), (b)(2) & (b)(4) (requiring dismissal of certain claims presented in § 2254 applications) with §§ 2244(a), (b)(3), (d) (addressing the filing and timeliness of certain § 2254 applications as a whole), the Court agrees with Professors Hertz and Liebman that § 2244(d) authorizes only the dismissal of applications, not individual claims. Because Shuckra's application contains a claim that is timely under § 2244(d)(1)(D) and (d)(2) as set out above, Shuckra's application as a whole is timely under § 2244(d), and dismissal of the other-wise untimely Miranda claim is not authorized under § 2244(d).

III. Conclusion

For the reasons set out above, respondent's motion to dismiss the petition for writ of habeas corpus [Doc. #7] is DENIED. Respondent shall file a response to the petition within thirty (30) days.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this ___ day of March, 2003.