

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HENRY AUSTIN :
 :
 v. : PRISONER
 : Case No. 3:06 cv 27 (SRU)
 :
 STATE OF CONNECTICUT :

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, Henry Austin (“Austin”), was convicted in 1998 and sentenced to a term of imprisonment of ten years, execution suspended after six years. He brings this action pro se for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. For the reasons that follow, the petition is denied.

I. Discussion

Austin’s petition is time-barred. The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 104-132, 110 Stat. 1214 (1996), amended section 2244(d)(1) to impose a one-year statute of limitations on federal petitions for writ of habeas corpus challenging a judgment of conviction imposed by a state court:

(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).

Austin's conviction became final on March 5, 2001, at the expiration of the time within which he could have filed a petition for certiorari in the United States Supreme Court. See Williams v. Artuz, 237 F.3d 147, 151 (2d Cir.) (holding in case where petitioner had appealed to state's highest court, direct appeal also included filing petition for writ of certiorari to Supreme Court or the expiration of time within which to file petition), cert. denied, 534 U.S. 924 (2001). The limitations period commenced on the following day and expired on March 5, 2002. Austin did not file his state habeas petition until June 13, 2003, after the limitations period for filing a federal habeas petition had expired. Thus, the limitations period was not tolled by the filing of the state petition.¹

¹Austin filed a petition for writ of habeas corpus in federal court on January 2, 2002. See Austin v. Gillis, et al., 3:02cv11 (AHN). Although the limitations period is tolled by the filing of a state habeas petition, it is not tolled by the filing of a federal habeas petition. See 28 U.S.C. § 2244(d)(2); Duncan v. Walker, 533 U.S. 167, 181-82 (2001). In addition, judgment entered dismissing the federal petition on February 28, 2002, and Austin did not appeal. Thus, even if the filing of the federal petition tolled the limitations period, it would not save the current petition because the limitations period would have been extended only 87 days, until May 31, 2002.

II. Conclusion

The petition for writ of habeas corpus [**Doc. #1**] is hereby **DENIED**. The Clerk is directed to close this case.

SO ORDERED this 30th day of May 2006, at Bridgeport, Connecticut.

/s/ Stefan R. Underhill

Stefan R. Underhill
United States District Judge