

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA (ERIE)**

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|-----------------------------|---|--------------------------------|
| JEREMIAH L. VAN TASSEL, |) | |
| |) | Case No. 1-21-cv-00172-SPB-RAL |
| Plaintiff, |) | |
| vs. |) | MOTION REQUESTING |
| |) | SUMMARY JUDGEMENT |
| MICHAEL CLARK, |) | |
| JOSH SHAPIRO, Att'y General |) | F.R.Civ.P. 56 |
| DISTRICT ATT'Y OF |) | |
| ERIE COUNTY, PA |) | |
| Defendants. |) | |

Comes now the Plaintiff in the above captioned action, Jeremiah L. Van Tassel, and moves this Court to grant him summary judgement for any and several of the following reasons:

1. Petitioner has exhausted his state remedies.
2. Petitioner filed his 28 U.S.C. § 2254 petition on July 6, 2021 (docket entry #1.)
3. The State has repeatedly requested (and has been granted) numerous continuances. See docket entries 08/18/2021, No. 2; 08/19/2021, No. 10; 09/17/2021, No. 13.
4. There was an answer due on 10/20/2021.
5. No answer has been forthcoming.
6. The case law mandates that the relief requested herein should be granted

We exercise plenary review over a district court's grant of summary judgment. *Blackhawk v. Pennsylvania*, 381 F.3d 202, 206 (3d Cir.2004). A court may grant a motion for summary judgment if, after it considers all probative materials of record, with inferences drawn in favor of the non-moving party, the court is satisfied that there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330, 106 S.Ct. 2548, 2556, 91 L.Ed.2d 265 (1986); *Brooks v. Kyler*, 204 F.3d 102, 105 n. 5 (3d Cir.2000). A dispute over an issue is "genuine" only if a reasonable jury could find in the non-movant's favor on that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). But the party opposing a motion for summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts." *Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1363 (3d Cir.1992) (citation and internal quotation marks omitted). Rather, that party must point to specific factual evidence showing that there is a genuine dispute on a material issue requiring resolution at trial. *See Celotex*, 477 U.S. at 323–24, 106 S.Ct. at 2551.

Chavarriaga v. State, 806 F.3d 210 (3rd Cir. 2015)

Which there isn't.

Under 28 U.S.C. § 2244(d)(1), habeas petitions filed by state prisoners are subject to a one-year statute of limitations. The limitations period begins to run on the latest of several dates, including "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." *Id.* § 2244(d)(1)(D).

Wilson v. Beard, 426 F.3d 653 (3rd Cir. 2005)

Petitioner had *no idea* that appellate counsel had done such an excellent job on his appeal brief and then *never filed* it.

However, by its own terms § 2254(d) applies only to claims already "adjudicated on the merits in State court proceedings." It follows that when, although properly preserved by the defendant, the state court has not reached the merits of a claim thereafter presented to a federal habeas court, the deferential standards provided by AEDPA and explained in *Williams* do not apply. See *Weeks v. Angelone*, 176 F.3d 249, 258 (4th Cir. 1999), *aff'd*, 528 U.S. 225, 120 S.Ct. 727, 145 L.Ed.2d 727 (2000) ("When a petitioner has properly presented a claim to the state court but the state court has not adjudicated the claim on the merits, however, our review of questions of law and mixed questions of law and fact is de novo."); *Fisher v. Texas*, 169 F.3d 295, 300 (5th Cir. 1999) (declining to apply § 2254(d)'s deferential standards because the Texas state courts had dismissed petitioner's claim on procedural grounds rather than on its merits); *Moore v. Parke*, 148 F.3d 705, 708 (7th Cir. 1998) ("A prerequisite for applying [§ 2254(d)] is that the state court adjudicated the issue before us on the merits.").

Appel v. Horn, 250 F.3d 203, 210 (3rd Cir. 2001)

WHEREFORE, Petitioner's 28 U.S.C. § 2254 petition should be granted.

Respectfully submitted,

Date: November , 2021

Jeremiah L. Van Tassel
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Certificate of Service

This certifies that I have on this day of November, 2021, placed a true and exact copy of my

PLAINTIFF'S MOTION REQUESTING SUMMARY JUDGEMENT

in the U.S. Mails, first-class postage prepaid, addressed to:

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Jeremiah L. Van Tassel