

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JEREMIAH LYLE VANTASSEL,

Petitioner

v.

MICHAEL CLARK, ATTORNEY
GENERAL JOSH SHAPRIO, and
DISTRICT ATTORNEY OF ERIE
COUNTY,

Respondents

)
) Case No. 1:21-cv-172
)
) SUSAN PARADISE BAXTER
) United States District Judge
)
) RICHARD A. LANZILLO
) Chief United States Magistrate Judge
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) SHOW CAUSE ORDER
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SHOW CAUSE ORDER

Before the Court is a petition for a writ of habeas corpus filed by Jeremiah Lyle Vantassel pursuant to 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). ECF No. 1. Petitioner is incarcerated at the State Correctional Institution at Albion, serving a sentence imposed by the Court of Common Pleas of Erie County, Pennsylvania.

It appears to the Court that Petitioner’s claims are subject to dismissal under AEDPA’s one-year statute of limitations, which is codified at 28 U.S.C. § 2244(d). However, in the response to the petition, the Erie County District Attorney’s Office calculated the limitations period and concluded that the petition is timely. ECF No. 16 at 3-5. The method by which this conclusion was reached is not clear from the response but, at a minimum, it is based on an inaccurate timeline.

The Court is not bound by the Respondents’ computation and may raise the issue *sua sponte* as long as the petitioner is given fair notice and an opportunity to respond and is not prejudiced. *Day v. McDonough*, 547 U.S. 198, 205-10 (2006); *United States v. Bendolph*, 409 F.3d 155, 161-70 (3d Cir. 2005) (en banc). *See also Wood v. Milyard*, 132 S.Ct. 1826, 1834 (2012). This Order gives Petitioner the required notice and opportunity to respond.

A review of the record and the criminal docket for Petitioner's underlying convictions in *Commonwealth v. Vantassel*, No. CP-25-CR-0002154-2016 (Erie Cnty. Com. Pl.), reveals the following. On April 19, 2018, following a jury trial, Petitioner was convicted of rape of a child and multiple other related crimes. On June 5, 2018, Petitioner was sentenced to an aggregate term on 16½ to 33 years' imprisonment.

On April 3, 2019, Petitioner filed a petition pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541-46. The petition was dismissed by the trial court. Petitioner appealed the dismissal; the Superior Court of Pennsylvania affirmed the dismissal on July 13, 2020. *Commonwealth v. Vantassel*, 239 A.3d 67 (Pa. Super. 2020) (unpublished memorandum). Petitioner did not seek further review.

Petitioner filed the instant petition on July 6, 2021.

AEDPA imposes a one-year limitations period for state prisoners seeking federal habeas review. It is codified at 28 U.S.C. § 2244(d) and provides:

- (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 that 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 facts supporting 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 section.

28 U.S.C. § 2244(d).

In analyzing whether a petition for writ of habeas corpus has been timely filed under the one-year limitations period, a federal court must undertake a three-part inquiry. First, the court must determine the “trigger date” for the one-year limitations period pursuant to section 2244(d)(1). *Caldwell v. Mahally, et al.*, 2019 WL 5741706, *5 (W.D. Pa. Nov. 5, 2019). Second, the court must determine whether any “properly filed” applications for post-conviction or collateral relief were pending during the limitations period that would toll the statute pursuant to section 2244(d)(2). *Id.* at *6. Third, the court must determine whether any of the other statutory exceptions or equitable tolling should be applied on the facts presented. *Id.* at *8.

Petitioner asserts two trial-related grounds for relief in his petition. ECF No. 1 at 5-6. The “trigger date” for these claims is the date on which Petitioner’s judgment of sentence became final. That date was July 5, 2018, when the time for filing a direct appeal from the judgment of sentence expired. Pa.R.A.P. 903(a); *Swartz v. Meyers*, 204 F.3d 417, 419 (3d Cir. 2000) (noting that a judgment becomes final at the conclusion of direct review or the expiration of time for seeking such review). The one-year limitations period for filing a habeas corpus petition was triggered on that date. 28 U.S.C. § 2244(d)(1)(A). Accordingly, Petitioner had to file any federal habeas petition concerning these claims on or before July 5, 2019.

However, Section 2244(d)(2) provides that the one-year limitations period is tolled during the pendency of a “properly filed” state post-conviction proceeding. Petitioner’s PCRA petition

was pending for 497 days: from April 3, 2019, when he filed it, until August 12, 2020, at the expiration of the time for filing with the Supreme Court of Pennsylvania a petition for allowance of appeal from the Superior Court's order affirming the dismissal of the PCRA petition. Pa.R.A.P. 1113(a), *Swartz*, 204 F.3d at 420-21. Tacking the tolled period of 497 days onto the original expiration date of July 5, 2019, Petitioner had to file his habeas petition by November 13, 2020. As set forth above, the instant petition was filed on July 6, 2021, more than seven months later.

For the foregoing reasons, it appears to the Court that Petitioner's claims are untimely. Unless he can demonstrate in his response to the Court's show cause order that equitable tolling¹ applies during the relevant time period or otherwise show cause that the petition is timely, this Court will recommend that the claims be dismissed as untimely.

AND NOW, this 27th day of October, 2022, IT IS HEREBY ORDERED that on, or before December 2, 2022, Petitioner Jeremiah Lyle Vantassel may file a response to this Court's Memorandum and show cause why his claims should not be dismissed for failure to file them within the one-year limitations period. On or before that same date, Respondents may submit a response setting forth their position.


RICHARD A. LANZILLO
Chief United States Magistrate Judge

¹ The United States Supreme Court has held that AEDPA's statute-of-limitation period "is subject to equitable tolling in appropriate cases." *Holland v. Florida*, 130 S.Ct. 2549, 2560 (2010). A petitioner is entitled to equitable tolling only if he shows both that (1) he has been pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way and prevented timely filing. *Id.* at 2562. See also *United States v. Thomas*, 2013 WL 1442489, *7-8 (3d Cir. Apr. 10, 2013); *Ross v. Varano*, 2013 WL 1363525, *9-11 (3d Cir. Apr. 5, 2013); *Munchinski v. Wilson*, 694 F.3d 308, 329-32 (3d Cir. 2012).