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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 99-10074-RWZ

ALFRED TRENKLER

v.

UNITED STATES OF AMERICA

MEMORANDUM OF DECISION

April 18, 2000

ZOBEL, D.J.

Petitioner, Alfred Trenkler, was convicted in 1993 of violations of 18 U.S.C. §§ 844 (d) and (i), and conspiracy in violation of 18 U.S.C. § 371, all in relation to the production, placement under a car and ultimate explosion of a bomb that killed one Boston police officer and maimed another. The judgment of conviction was affirmed, and mandate issued on September 5, 1995. Petitioner did not apply for a writ of certiorari to the Supreme Court, but on December 22, 1995, he filed a motion for a new trial pursuant to Rule 33, Fed. R. Crim. P. based on allegedly new evidence. The denial of that motion was affirmed on January 28, 1998. On January 7, 1999, Trenkler filed the instant petition under 28 U.S.C. § 2255 seeking vacation of the judgment of conviction on the grounds of ineffective assistance of counsel.

In 1996, Congress enacted the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") which became effective on April 24, 1996. Among other changes wrought, the statute amended Section 2255 to impose for the first time a limitations period for the filing of federal habeas petitions, and the government argues that, as a result, this

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petition is time barred. The amendment provides that "[a] 1-year period of limitation shall apply" and, insofar as relevant to this case, that it shall run from "the date on which the judgment of conviction becomes final. . . ." 28 U.S.C. § 2255. For petitioners whose convictions became final before the AEDPA's effective date, a one-year grace period was judicially imposed, allowing such petitioners until April 24, 1997 to file a Section 2255 petition. See Rogers v. United States, 180 F.3d 349, 354 (1st Cir. 1999) (joining other circuits in allowing one-year grace period for filing Section 2255 petitions).

Whether the judgment of conviction is deemed to be final when the mandate issued from the Court of Appeals or when the time for filing a petition for certiorari expired is, in this case, immaterial as both precede the effective date of the AEDPA so the period of limitations is set by the one-year grace period. Two timing issues do emerge, however. First, petitioner asserts that the date the Court of Appeals affirmed denial of the motion for a new trial, January 28, 1998, is the appropriate accrual date and the petition is thus timely. The difficulty with the argument is that the statute, which explicitly describes four sets of circumstances triggering the limitations period, does not include the one posited by petitioner.¹ Moreover, none of the circumstances set forth

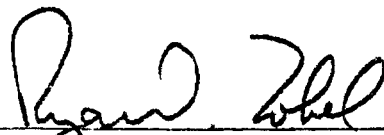
¹According to 28 U.S.C. § 2255, the limitation period runs from the latest of:

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the 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
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

can be interpreted to encompass final resolution of a new trial motion postdating conviction and appellate review.

The second question is whether the AEDPA's one-year grace period is tolled during the pendency of the Rule 33 motion. The AEDPA expressly provides for tolling in the context of exhaustion of state postconviction review in state habeas corpus cases.² Because no similar language exists in the federal habeas corpus section, I conclude that tolling is not allowed under Section 2255. Finally, even if the limitations period is not jurisdictional and can therefore be equitably tolled, this case presents no grounds for equitable tolling. See Sandvik v. United States, 177 F.3d 1269, 1271-72 (11th Cir. 1999) (holding that Section 2255 permits equitable tolling, relying on analysis of other circuits in cases construing Section 2254); cf. Libby v. Magnusson, 177 F.3d 43, 48 n.2 (1st Cir. 1999) (reserving judgment on whether equitable tolling might apply under Section 2254). Nothing in the papers suggests any wrongful government conduct that prevented petitioner from asserting his rights in a timely manner or any extraordinary circumstances beyond petitioner's control that made it impossible to file the petition on time. See, e.g., Alvarez-Machain v. United States, 107 F.3d 696, 701 (9th Cir. 1996) (discussing situations in which equitable tolling is appropriate).

Because the petition was filed too late, the petition is denied.



RYAN W. ZOBEL
UNITED STATES DISTRICT JUDGE

April 18, 2000

²28 U.S.C. § 2244 (d)(2) provides: "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."



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