

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14917
Non-Argument Calendar

D.C. Docket No. 6:11-cv-01809-JA-KRS

DIRK WILLIAMS,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(February 2, 2017)

Before TJOFLAT, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

Dirk Williams, a counseled Florida prisoner, appeals the district court's dismissal of his habeas corpus petition under 28 U.S.C. § 2254 as untimely. A

certificate of appealability was granted on the issue of “[w]hether the district court erred in dismissing as time-barred Williams’s 28 U.S.C. § 2254 petition.” He argues on appeal that the district court erred when it dismissed his petition because it started the limitations period under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) on the day his conviction became final, instead of the following day, as required by our precedent and Fed. R. Civ. P. 6(a)(1)(A). The State of Florida does not contest that Williams’s petition was timely filed under our precedent and that it is not barred by AEDPA’s statute of limitations.

We review *de novo* the dismissal of a federal habeas petition as time-barred under 28 U.S.C. § 2244(d). *Cole v. Warden, Ga. State Prison*, 786 F.3d 1150, 1155 (11th Cir. 2014), *cert. denied*, 135 S. Ct. 1905 (2015).

AEDPA establishes a one-year statute of limitations for federal habeas petitions filed by state prisoners, which runs, among other triggers, from “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). The AEDPA’s limitation period is tolled while “a properly filed application for State post-conviction or other collateral review... is pending.” 28 U.S.C. § 2244(d)(2). A prisoner’s pleading is considered filed on the date the prisoner delivers the filing to prison authorities for mailing to the court. *Day v. Hall*, 528 F.3d 1315, 1318 (11th Cir. 2008).

Under Florida law, the Florida Supreme Court lacks jurisdiction to hear an appeal from a *per curiam* affirmance of a conviction by a lower state appellate court. *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980). After the final state court of appeals rules on a § 2254 petitioner's conviction, the one-year limitations period does not begin to run until the 90-day window to petition the United States Supreme Court for a writ of *certiorari* expires. *Bond v. Moore*, 309 F.3d 770, 774 (11th Cir. 2002). A Florida state court of appeals's order denying a rehearing on its affirmance of the state trial court's denial of a motion for post-conviction relief is pending until the mandate issues. *Nyland v. Moore*, 216 F.3d 1264, 1267 (11th Cir. 2000).

We calculate the one year limitations period under AEDPA using the anniversary method, where the limitations period expires on the one-year anniversary of the date the period begins to run. *See Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008).

Fed. R. Civ. P. 6(a)(1) states that, when calculating a period of time that is stated in days or a longer unit of time, courts should exclude the day of the event that triggers the period. *See San Martin v. McNeil*, 633 F.3d 1257, 1266 (11th Cir. 2011) (“[D]irect review of Petitioner's conviction concluded on October 5, 1998.... Petitioner had until Wednesday, October 6, 1999 to file this petition.”); *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001) (concluding

that Washington's conviction became final on October 6, 1997, and he had until October 7, 1998 to file his § 2255 motion). In *Moore v. Campbell*, 344 F.3d 1313, 1319 (11th Cir. 2003), the petitioner, who was convicted and sentenced before the enactment of AEDPA, filed his § 2254 petition on April 24, 1997. This Court previously stated that such petitions must be filed by April 23, 1997, one year from AEDPA's enactment date of April 24, 1996. *Id.* 1319–20. However, in *Moore*, we concluded that Moore's petition was timely and the previous statement about a April 23, 1997 deadline was dicta because under Fed. R. Civ. P. 6(a), the limitations period did not start until the day after the triggering date of April 24, 1996. *Id.* at 1319–20.

Here, Williams's petition was timely. Williams's direct appeal to the Florida 5th District Court of Appeal ended on July 8, 2008, when the court denied his motion for rehearing. Because the Florida 5th District Court of Appeal affirmed his conviction *per curiam* without a written opinion, he could not appeal to the Florida Supreme Court. So, On October 6, 2008, his conviction became final after 90 days, when his time to file a writ of *certiorari* to the United States Supreme Court expired. *See Jenkins*, 385 So. 2d at 1359; *Bond*, 309 F.3d at 1318. On that date, Williams presented his Rule 3.850 motion to the prison authorities for mailing, and his motion tolled the time until he filed his § 2254 petition in

November 2011. *See* 28 U.S.C. § 2244(d)(2); *Day*, 528 F.3d at 1318; *Nyland*, 216 F.3d at 1267.

Because Williams's § 2254 petition was timely filed, the district court erred in dismissing it as time-barred. We vacate and remand for further proceedings.

VACATED AND REMANDED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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February 02, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 14-14917-CC
Case Style: Dirk Williams v. Secretary, Florida Department, et al
District Court Docket No: 6:11-cv-01809-JA-KRS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Julie F. Cohen, CC at (404) 335-6170.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion