MING v. TENNIS et al

2015 | Cited 0 times | E.D. Pennsylvania | May 28, 2015

UNITED STATES COURT FOR OF PENNSYLVANIA JOHN

Petitioner

CIVIL

2 2015

BUCKWALTER,

Clerk Dep.Clerk

Presently Petitioner's "Independent Order,

Order Pursuant Proc. 60(b)." Petitioner

U.S. S.Ct. U.S._, S. 1309

Petitioner's 60

60(b)

1 Petitioner's 2006,'

2007.

2007. IN THE DISTRICT THE EASTERN DISTRICT MING,

v. FRANKLIN TENNIS, et al., MAY 8

Respondents.

J.

pending is Action for Relief From Final or, Alternatively, Motion for Relief from Final to Fed. R. Civ.

argues that he is entitled to relief pursuant to the decisions in McQuiggin v. Perkins, __ __ , 133 1924 (2013), Martinez v. Ryan, 566 132 Ct. (2012), and Cox v. Horn, 757 F.3d 113 (3d Cir. 2014). However, Rule motion is not timely. 1

Therefore, the instant motion will be denied. Rule provides, in relevant part, that relief from judgment may be granted on the following grounds:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

petition for habeas corpus relief, filed on April 21, was denied on March 28, The Court of Appeals for the Third Circuit denied his request for a certificate of appealability on August 2,

60(b). "All 60(b) time."' In Prod.

2010). "What 60(b)

case." Id. "As 60(b

sooner." Pierce, 2014 2014 340 U.S. 202

60(b) Order 2007,

Order

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ineffective." Id. 1320. Supreme Fed.R.Civ.P. motions filed pursuant to Rule must be made within a 'reasonable

re Diet Drugs (Phentermine!Fenfluramine/Dexfenfluramine) Liab. Litig., 383 F. App'x 242, 246 (3d Cir. constitutes a 'reasonable time' under Rule is to be decided under the circumstances of each (citation omitted). a general matter, a Rule)(6) motion filed more than one year after final judgment is untimely unless 'extraordinary circumstances' excuse the [party's] failure to proceed Ortiz v. No. 08-4877, WL 3909138, at *1 (D. Del. Aug. 11, (citing Ackerman v. United States,

193, (1950)). The court concludes that Petitioner's instant Rule motion, in which he seeks relief from the court's dated March 28, denying his petition for habeas corpus relief, was not filed within a reasonable time. Petitioner filed the instant motion more than eight years after the entry of the court's denying his petition for habeas corpus relief.

The court first notes that in Martinez, the Supreme Court held that w]here, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, [i.e., a collateral proceeding that provides the first occasion for a defendant to raise a claim that trial counsel was ineffective,] a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was at Martinez effected a change in the Court's habeas corpus jurisprudence, which previously had not recognized a claim for ineffective assistance of counsel at the post-trial stage that would excuse procedural default of a petitioner's claim. Recognizing this, in Cox the Court

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doubt." S.Ct. of Appeals provided guidance for district courts considering Martinez based Rule motions in habeas cases and remanded the petitioner's Rule motion to the district court for reconsideration in light of that guidance. Cox, 757 F.3d at 124.

In Cox, the Court of Appeals made clear the outset that one of the critical factors in the equitable and case-dependent nature of the)(6) analysis ... is whether the)(6) motion was brought within a reasonable time of the Martinez decision." Cox, 757 F.3d at 115-16. The panel did not provide a specific time frame that it deemed reasonable, stating only that the petitioner's motion, which was filed days after the Martinez decision, "[wa]s close enough to that decision to be deemed reasonable." Id. at 116. However, the panel warned that "unless a petitioner's motion for 60(b)(6) relief based on Martinez was brought within a reasonable time of that decision, the motion will fail." Id.

The Supreme Court filed its opinion in Martinez on March Petitioner filed the instant Rule motion on May 5, more than three years after Martinez was decided and any possible exception to the rule barring procedurally defaulted claims created. Moroever, Petitioner also relies on Cox to support his claim for relief. His reliance thereon is misplaced because Cox simply provides courts with guidance to analyze Martinez claims.

Petitioner also argues that he is entitled to relief because he is actually innocent and the requested relief is warranted pursuant to McQuiggin. In McQuiggin the Supreme Court held that

innocent, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bars, as it was in Schlup and House, or, as in this case, expiration of the statute of McQuiggin, 133 at 1928. The petitioner must persuade district court that, in light of new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable Id. (quoting Schlup 115 at 866). However, the Supreme

2013.

Petitioner "extraordinary circumstances" See Zahl 403

2010). Petitioner's

"that

ruling." Slack U.S. 120 S.Ct. (2000). Petitioner

Order Court issued its decision in McQuiggin on May 28, The instant motion was filed almost two years later.

Finally, despite his arguments to the contrary fails to present

which justify his delay in filing. v. Harper, F. App'x 729, 733-734 (3d Cir. Therefore, this court is compelled to conclude that motion was not timely filed. A certificate of appealability shall issue only if a petitioner establishes jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural v. McDaniel, 529 473, 484, 1595 The court concludes that has not made such a showing with respect to his motion. Therefore, a certificate of appealability will not issue.

An appropriate follows.

4