

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DONALD SYKES,	§	
	§	
<i>Petitioner,</i>	§	
v.	§	CIVIL ACTION: H-06-1861
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division	§	
	§	
<i>Respondent.</i>	§	

**MEMORANDUM AND RECOMMENDATION**

Petitioner Donald Sykes's application for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254 has been referred to this magistrate judge for a report and recommendation (Dkt. 5).<sup>1</sup> The court recommends that petitioner's application be dismissed as time-barred.

**1. Procedural Background**

Sykes alleges in his petition that he was convicted on January 3, 2005 in the 56th District Court of Galveston County, Texas on charges of possession of a controlled substance with intent to deliver and tampering with evidence. He was sentenced to 10 years in prison. He did not appeal his conviction.

Sykes alleges he filed two applications for writ of habeas corpus in state court on or about April 1, 2006, which were denied on March 26, 2006. Obviously, petitioner has

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<sup>1</sup> Petitioner has filed a request to amend the docket to correct the spelling of his name from "Donal" to "Donald" (Dkt. 3). That request is granted and the clerk is directed to correct the docket accordingly.

confused the dates. A review of the state court records available on the Texas Court of Criminal Appeals web site reveals that Sykes filed two state writ applications on April 6, 2006, both of which were denied without written opinion on April 26, 2006. Sykes filed his federal application for writ of habeas corpus on May 29, 2006.

## **2. Statute of Limitations**

Sykes's federal application is governed by the amendments to the federal habeas corpus statutes contained in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254.

The AEDPA provides as follows:

- (d)(1) A 1-year period of limitation shall apply to an application for 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 the 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 factual predicate of 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 subsection.

28 U.S.C. § 2244(d).

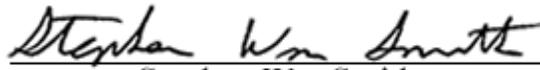
Because Sykes did not file an appeal, his conviction became final on February 2, 2005, thirty days after his sentencing. Under § 2244(d)(1)(A), Sykes's limitation period expired on February 2, 2006. Because he filed his state court writ applications on April 6, 2006, after the federal period had already expired, § 2244(d)(2) does not extend the one year period established by § 2244(d)(1)(A). *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000).

The court recommends that petitioner's application for writ of habeas corpus be denied with prejudice.

The court further finds that Sykes has not made a substantial showing that he was denied a constitutional right or that it is debatable whether this court is correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, the court recommends that a certificate of appealability not issue.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on July 24, 2006.

  
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Stephen Wm Smith  
United States Magistrate Judge