

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

JORDAN LE SEAN PAIGE,	§	
	§	
<i>Petitioner,</i>	§	
v.	§	CIVIL ACTION: H-06-3073
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division	§	
	§	
<i>Respondent.</i>	§	

**MEMORANDUM AND RECOMMENDATION**

Petitioner Jordan Le Sean Paige'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. 4). The court recommends that petitioner's application be dismissed as time-barred.

Paige alleges in his petition that he was convicted on August 4, 2004 in Harris County, Texas on a charge of first degree murder. He was sentenced to 30 years in prison. He did not appeal his conviction.

Paige filed an application for writ of habeas corpus in state court on or about November 17, 2005, which was denied on July 26, 2006.

Paige'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 Paige did not file an appeal, his conviction became final on September 4, 2004, thirty days after his sentencing. Under § 2244(d)(1)(A), Paige's federal limitation period expired on September 4, 2005. Paige filed his federal petition approximately one year

late, on or about September 26, 2006.<sup>1</sup> Because he filed his state court writ application on November 17, 2005, 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). No other tolling provision of § 2244(d) applies in this case.

The court recommends that petitioner's application for writ of habeas corpus be denied with prejudice.<sup>2</sup>

The court further finds that Paige 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.

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<sup>1</sup> The district court received and docketed the application on September 29, 2006. The court treats a *pro se* prisoner's petition as filed on the date he deposits it in the prison mail system for purposes of the AEDPA's statute of limitations. *Fisher v. Johnson*, 174 F.3d 710, 712 n.8 (5th Cir. 1999). Paige does not state the date he placed the petition in the mail, but the envelope containing his petition is postmarked September 26, 2006.

<sup>2</sup> Petitioner's motion to proceed *in forma pauperis* (Dkt. 2) is denied. Petitioner represents he had \$200 in his prisoner account at the time he filed his petition.

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 October 17, 2006.

  
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Stephen Wm Smith  
United States Magistrate Judge