

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

LOUIS A. KRUEGER,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-07-4253
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

ORDER

Petitioner Krueger’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).

Background

According to his petition, Krueger was convicted of aggravated sexual assault of a child on August 5, 2003 in the 177th District Court for Harris County, Texas and sentenced to life in prison. He alleges that the First Court of Appeals for Houston affirmed his conviction on an unknown date, and that the Texas Court of Criminal Appeals denied his application for writ of habeas corpus on October 15, 2003.

A review of Texas appellate court websites reveals that Krueger was in fact convicted in 1999; the First Court of Appeals confirmed his conviction in 2001; and the Texas court of criminal appeals denied his state application for writ of habeas corpus without written order on October 15, 2003. Krueger’s petition is time-barred under either set of facts.

Analysis

This case is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Under the AEDPA, a petition for habeas relief filed by a person in state custody is subject to a one-year period of limitations which runs 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.

28 U.S.C. § 2244(d)(1).

Even assuming that Krueger's federal statute of limitations was tolled through October 15, 2003, the date his state writ application was denied, his federal application is untimely. He did not file his federal petition until November 29, 2007. Krueger's petition presents no facts that suggest grounds for equitable tolling of the limitations period.

Conclusion

It appears from the face of the petition that Krueger's petition is time-barred and thus is subject to summary dismissal for failure to state a claim. *Jones v. Bock*, 127 S. Ct. 910, 920-21 (2007). Krueger will be given a fair opportunity to show why the limitation period has not expired. *See Day v. McDonough*, 126 S. Ct. 1675, 1684 (2006). It is therefore

ORDERED that Krueger shall have 30 days from the date of this order to file a brief explaining why his case is not time-barred. After the expiration of 30 days, this court will issue a recommendation for denial of the petition by the district court, or order a response from the government, as appropriate. It is further

ORDERED that Krueger's motion to proceed in forma pauperis (Dkt. 2) is granted.

Signed at Houston, Texas on December 28, 2007.



Stephen Wm Smith
United States Magistrate Judge