

DOCKET NUMBER: CV22-5001132-S
STATE OF CONNECTICUT SUPERIOR COURT
SUPERIOR COURT
G.A. 19

BENJAMIN JENKINS

2024 MAY 17 A 9:32 JUDICIAL DISTRICT OF

V. : TOLLAND AT SOMERS

COMMISSIONER OF CORRECTION : MAY 17, 2024

MEMORANDUM OF DECISION ON ORDER TO SHOW CAUSE

Benjamin Jenkins, the petitioner, filed this petition for a writ of habeas corpus on November 26, 2021. Thereafter, in January 2024, the respondent sought an order to show cause why the petition should be permitted to proceed pursuant to General Statutes § 52-470. Jenkins filed an objection. The court heard evidence and argument on whether the petition should be dismissed for failure to show good cause on May 10, 2024.

After review of the matter the court finds that Jenkins has not demonstrated good cause for the untimely filing of the instant habeas petition.

I. Relevant Facts

Jenkins was convicted by a jury of, inter alia, murder and sentenced to ninety years' incarceration. He filed a direct appeal, which affirmed his convictions and then three subsequent habeas petitions. The last one was filed in 2014, denied by Judge Oliver in August 2017 and affirmed by our Appellate Court on October 9, 2018. *Jenkins v. Commissioner of Correction*, 185 Conn. App. 905, 193 A.3d 716 (per curiam), cert. denied, 330 Conn. 949, 196 A.3d 804 (2018). The Supreme Court denied certification to appeal on November 20, 2018. He then filed the instant petition in November 2021. A hearing on the respondent's order to show cause to excuse the untimely filed petition was held on May 10, 2024. Jenkins testified and submitted a memorandum.

Jenkins testified that he was not aware of any time limit within which he had to file this petition. The last attorney he had was Attorney Joseph Jaumann who represented him in his third

habeas appeal. According to Jenkins, Attorney Jaumann did not provide him with any information about the timeliness of a subsequent petition. He testified that he had access to an outdated law library.

II. Legal Discussion

A habeas court may be barred from hearing the merits of a petition if the petition was not filed in a timely manner. Alleging just that, the respondent sought an order to show cause pursuant to General Statutes § 52-470, which provides, in relevant part:

(d) In the case of a petition filed subsequent to a judgment on a prior petition challenging the same conviction, there shall be a rebuttable presumption that the filing of the subsequent petition has been delayed without good cause if such petition is filed after the later of the following: (1) Two years after the date on which the judgment in the prior petition is deemed to be a final judgment due to the conclusion of appellate review or the expiration of the time for seeking such review; (2) October 1, 2014; or (3) two years after the date on which the constitutional or statutory right asserted in the petition was initially recognized and made retroactive pursuant to a decision of the Supreme Court or Appellate Court of this state or the Supreme Court of the United States or by the enactment of any public or special act. For the purposes of this section, the withdrawal of a prior petition challenging the same conviction shall not constitute a judgment. The time periods set forth in this subsection shall not be tolled during the pendency of any other petition challenging the same conviction. Nothing in this subsection shall create or enlarge the right of the petitioner to file a subsequent petition under applicable law.

(e) In a case in which the rebuttable presumption of delay under subsection (c) or (d) of this section applies, the court, upon the request of the respondent, shall issue an order to show cause why the petition should be permitted to proceed. The petitioner or, if applicable, the petitioner's counsel, shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. For the purposes of this subsection, good cause includes, but is not limited to, the discovery of new evidence which materially affects the merits of the case and which could not have been discovered by the exercise of due diligence in time to meet the requirements of subsection (c) or (d) of this section.

There is no dispute that the petition is untimely and there is a rebuttable presumption that the filing of the instant petition has been delayed without good cause. General Statutes § 52-470 (e) provides that if such a rebuttable presumption exists, the petitioner shall have a meaningful opportunity to investigate the basis for the delay and respond to the order. While “meaningful opportunity” is not defined in the statute, our Supreme Court has noted that the term usually refers to an opportunity

that comports with due process. Kelsey v. Commissioner of Correction, 329 Conn. 711, 722, 189 A.3d 578 (2018) (Kelsey I). If, after such opportunity, the court finds that the petitioner has not demonstrated good cause for the delay, the court shall dismiss the petition. Our appellate courts have recently defined good cause as encompassing “something outside of [a petitioner’s] control, or the control of habeas counsel, [that] caused or contributed to the delay in the filing of [the] second petition.” Kelsey v. Commissioner of Correction, 343 Conn. 424, 442, 274 A.3d 85 (2022) (Kelsey II).

Our Supreme Court approved of our Appellate Court’s enumeration of the following factors in determining whether a petitioner has proven good cause: “(1) whether external forces outside the control of the petitioner had any bearing on the delay; (2) whether and to what extent the petitioner or his counsel bears any personal responsibility for any excuse proffered for the untimely filing; (3) whether the reasons proffered by the petitioner in support of a finding of good cause are credible and are supported by evidence in the record; and (4) how long after the expiration of the filing deadline did the petitioner file the petition.” Kelsey v. Commissioner of Correction, 202 Conn. App. 21, 34-35, 244 A.3d 171 (2020), *aff’d*, Kelsey II, *supra*, 343 Conn. 424. The court also recognized that “the legislature certainly contemplated a petitioner’s lack of knowledge of a change in the law as potentially sufficient to establish good cause for an untimely filing;” Kelsey II, *supra*, 343 Conn. 444; however, “the legislature did not intend for a petitioner’s lack of knowledge of the law, standing alone, to establish that a petitioner has met his evidentiary burden of establishing good cause.”¹ *Id.* Thus, a petitioner’s professed lack of knowledge is to be viewed in conjunction with the factors enumerated above.

¹ The court also stated that the frivolousness of a petition is an additional factor that a habeas court can consider in determining good cause. Kelsey II, *supra*, 343 Conn. 444 n.9.

Recently, in Rose v. Commissioner of Correction, 348 Conn. 333, 347, 304 A.3d 431 (2023), our Supreme Court held that “ineffective assistance of counsel is an external, objective factor that may constitute good cause to excuse the delayed filing of a habeas petition under § 52-470 (c) and (e).” The court held that even though “a petitioner is bound by his counsel’s inadvertence, ignorance, or tactical missteps, regardless of whether counsel is flouting procedural rules or hedging against strategic risks, a petitioner is not bound by the ineffective assistance of his counsel.” (Internal quotation marks omitted.) Rose v. Commissioner of Correction, supra, 348 Conn. 348. Therefore, “ineffective assistance of counsel is an objective factor external to the petitioner that may constitute good cause to excuse the late filing of a habeas petition under the totality of the circumstances pursuant to § 52-470 (c) and (e).” Id.

However, the court did not hear from trial counsel Attorney Jaumann. This court has previously held that the uncorroborated testimony of a petitioner, by itself, is insufficient to demonstrate that counsel did not advise them of the presumption of untimeliness in General Statutes § 52-470. See Rice v. Commissioner of Correction, Superior Court, judicial district of Tolland, docket no. CV184009457S (Bhatt, J., Apr. 3, 2019), affirmed, 204 Conn. App. 513, 251 A.3d 1009, cert. denied, 337 Conn. 906, 252 A.3d 365 (2021), citing Langston v. Commissioner of Correction, 185 Conn. App. 528, 197 A.3d 1034 (2018), appeal dismissed, 335 Conn. 1, 225 A.3d 282 (2020).

Therefore, Jenkins has not demonstrated good cause to excuse the untimely filing of the petition. The petition is dismissed.

Copies sent to:


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Judge Bhatt


Bhatt, J.

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by: Kathryn Stackpole, First Asst. Clerk
5/17/2024