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This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit.

Jerry L. PARKER, Petitioner-Appellant,

v.

SECRETARY, DEPARTMENT OF
CORRECTIONS, Attorney General,
State of Florida, Respondents-Appellees.

No. 20-10729

|

Non-Argument Calendar

|

(April 2, 2021)

Synopsis

Background: Following affirmance of his convictions, [106 So.3d 940](#), state inmate filed petition for writ of habeas corpus. The United States District Court for the Middle District of Florida, No. 8:16-cv-03483-WFJ-AEP, [William Jung, J.,](#) [2020 WL 1496190](#), dismissed petition, and petitioner appealed.

[Holding:] The Court of Appeals held that petitioner's amended motion for state postconviction relief toll statutory period for seeking federal habeas relief from original filing date.

Vacated and remanded.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

West Headnotes (1)

[1] Habeas Corpus ↗ Pursuit of other remedies

Florida prisoner's amended motion for state postconviction relief, filed after his initial motion

was denied with leave to amend, related back to original filing date, therefore tolling statutory period for seeking federal habeas relief from original filing date until conclusion of his postconviction proceedings. [28 U.S.C.A. § 2244\(d\)\(2\); Fla. R. Crim. P. 3.850.](#)

Appeal from the United States District Court for the Middle District of Florida, D.C. Docket No. 8:16-cv-03483-WFJ-AEP

Attorneys and Law Firms

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Before [MARTIN](#), [LAGOA](#), and [BRASHER](#), Circuit Judges.

Opinion

PER CURIAM:

Jerry L. Parker appeals the district court's dismissal of his [28 U.S.C. § 2254 *157](#) petition as untimely. Specifically, Parker challenges the district court's conclusion that his amended state postconviction motion under Florida's [Rule of Criminal Procedure 3.850](#) had no tolling effect because the one-year limitation period had already expired. Parker says his amended [Rule 3.850](#) motion related back to his original [Rule 3.850](#) motion, which was filed before the limitation period expired. The State has declined to defend the district court's decision and has conceded that this matter should be remanded. We therefore vacate and remand so the district court can consider the merits of Parker's claims.

I.

In 2011, Parker was convicted of several Florida state law offenses. His judgment of conviction became final on April 18, 2013. Relevant here, on December 31, 2013, Parker filed a motion for postconviction relief under [Rule 3.850](#). The state court struck the motion without prejudice because it was improperly filed, but granted him an extension until October 6, 2014 to file a corrected [Rule 3.850](#) motion. Parker filed his corrected motion on September 29, 2014. The state court ultimately denied his motion, and the mandate issued on December 7, 2016.

On December 19, 2016, Parker filed the present [§ 2254](#) petition. The district court dismissed his petition as time-barred, finding that the limitation period had expired on June 18, 2014. The court also found that neither of Parker's state postconviction motions tolled the limitations period. It explained that Parker's December 31, 2013 [Rule 3.850](#) motion did not toll the limitation period because it was not properly filed. And even though Parker subsequently filed a corrected [Rule 3.850](#) motion on September 29, 2014, the court said that motion had no tolling effect either because the one-year limitation period had already expired.

Our Court granted a Certificate of Appealability on the following issue:

Whether the district court erred in dismissing Parker's [§ 2254](#) petition as time-barred in light of [Bates v. Sec'y, Dep't of Corr., 964 F.3d 1326, 1328 \(11th Cir. 2020\)](#), [Hall v. Sec'y, Dep't of Corr., 921 F.3d 983, 987 \(11th Cir. 2019\)](#), and [Green v. Sec'y, Dep't of Corr., 877 F.3d 1244, 1249 \(11th Cir. 2017\)](#).

II.

We review *de novo* the dismissal of a petition for a writ of habeas corpus as untimely. [Bates v. Sec'y, Dep't of Corr., 964 F.3d 1326, 1328 \(11th Cir. 2020\)](#). Under the Antiterrorism and

Effective Death Penalty Act of 1996 ("AEDPA"), [§ 2254](#) petitions are subject to a one-year statute of limitations. [28](#)

[U.S.C. § 2244\(d\)\(1\)\(A\)](#). However, that one-year limitation period is statutorily tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment of claim is pending." [Id. § 2244\(d\)\(2\)](#).

The State has waived any argument that would distinguish our existing precedents from this case. We have said that a Florida prisoner's amended [Rule 3.850](#) motion, filed after his initial motion was denied with leave to amend, related back to the original filing date, therefore tolling the period from the original filing date until the conclusion of his [Rule 3.850](#) proceedings. [Green v. Sec'y, Dep't of Corr., 877 F.3d 1244, 1248 \(11th Cir. 2017\)](#). This Court has also held that a habeas petitioner's corrected [Rule 3.850](#) motion related back to the initial, improperly sworn [Rule 3.850](#) motion where the petitioner "filed a properly sworn [Rule 3.850](#) motion within the state court's prescribed time period."

[Hall v. Sec'y, Dep't of Corr., 921 F.3d 983, 988 \(11th Cir. 2019\)](#). And we later clarified *158 that, "under [Green](#) and [Hall](#), a compliant [Rule 3.850](#) motion relates back to the date of filing of a noncompliant motion, such that the compliant motion was 'properly filed' and 'pending' as of that date for purposes of tolling the limitations period." [Bates, 964 F.3d at 1328](#). Indeed, we recently held that a [§ 2254](#) petition was timely for the very same reason: the petitioner's amended Florida postconviction motion related back to his initial postconviction motion. [Morris v. Sec'y, Fla. Dep't of Corr., No. 18-14802, 991 F.3d 1351, 1354–56, 1356 \(11th Cir. Mar. 25, 2021\)](#). In [Morris](#), as here, the amended state postconviction motion was timely filed. See [id. at 1354–55](#). Therefore, because Parker filed his September 29, 2014 corrected [Rule 3.850](#) motion within the time the state court prescribed for doing so, it related back to his original December 31, 2013 motion.

Parker's [§ 2254](#) petition was timely filed. The limitation period ran for 257 days from the time his conviction became final on April 18, 2013 to December 31, 2013 when Parker filed his original [Rule 3.850](#) motion. The limitation period then remained tolled throughout the conclusion of Parker's [Rule 3.850](#) proceedings, until the mandate issued on December 7, 2016. See [Green, 877 F.3d at 1247](#). Thereafter, an additional 12 days of untolled time ran before Parker filed the present [§ 2254](#) petition on December 19,

2016. Thus, a total of 269 untold days passed between the date of Parker's convictions and sentences becoming final and the date he filed his federal habeas petition. His [§ 2254](#) petition was therefore timely. [28 U.S.C. § 2244\(d\).](#)

VACATED AND REMANDED.

All Citations

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