

Porter v. Sec'y, Dep't of Corr.

United States District Court for the Middle District of Florida, Tampa Division

November 26, 2025, Decided; November 26, 2025, Filed

Case No. 8:23-cv-441-JLB-AEP

Reporter

2025 U.S. Dist. LEXIS 232625 *; 2025 LX 539680

AARON C. PORTER, Petitioner, v. SECRETARY, DEPARTMENT OF CORRECTIONS, Respondent.

Counsel: [*1] Aaron C. Porter, Petitioner, Pro se, Raiford, FL.

For Secretary Department of Corrections, Respondent: Tonja Vickers Rook, LEAD ATTORNEY, Florida Attorney General's Office, Tampa, FL.

Judges: JOHN L. BADALAMENTI, UNITED STATES DISTRICT JUDGE.

Opinion by: JOHN L. BADALAMENTI

Opinion

ORDER

Aaron C. Porter, a Florida prisoner, filed a Petition for Writ of Habeas Corpus under [28 U.S.C. § 2254](#). (Doc. 1). Respondent opposes the petition as untimely. (Doc. 14). Upon consideration, the Court directs Respondent to respond to the claims in the petition.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governs this proceeding. [Carroll v. Sec'y, DOC, 574 F.3d 1354, 1364 \(11th Cir. 2009\)](#). The AEDPA established a one-year limitations period for filing a [section 2254](#) petition. [28 U.S.C. § 2244\(d\)\(1\)](#). This one-year period starts running on the later of "the date on which the judgment became final by the conclusions of direct review or the expiration of the time for seeking such review." [28 U.S.C. § 2244\(d\)\(1\)\(A\)](#). A state court's change to a prisoner's sentence can result in a "new" judgment that starts a new one-year limitations period. [Patterson v. Sec'y, Fla. Dep't of Corr., 849 F.3d 1321, 1326-27 \(11th Cir. 2017\)](#).

Porter was originally sentenced in state court in 2010. The state court granted his subsequent motion to correct an illegal sentence, brought under [Florida Rule of Criminal Procedure 3.800\(a\)](#). Respondent argues that Porter's 2021 resentencing did not create [*2] a "new" judgment entitling him to a new AEDPA limitations period because the sentence was entered nunc pro tunc to the original 2010 sentencing date. Respondent relies on *Osbourne v. Sec'y, Fla. Dep't of Corr.*, which found that an amended sentence entered nunc pro tunc to the original sentencing date did not create a new intervening judgment. [968 F.3d 1261 \(11th Cir. 2020\)](#). *Osbourne* noted that under Florida law, the term nunc pro tunc "refers, not to a new or de novo decision, but to the judicial act previously taken." [Id. at 1266-67](#). Thus, "because the correction to the sentence was imposed nunc pro tunc, under Florida law the . . . amended sentence related back to the date of the initial judgment and was not a 'new judgment' for purposes of [§ 2244](#)." [Id. at 1267](#).

In his reply, Porter argues that his petition should not be dismissed as untimely. Porter brought an earlier [section 2254](#) action in *Porter v. Sec'y, Dep't of Corr.*, Case No. 8:19-cv-2505-SDM-AAS (M.D. Fla.). While that action was pending, Porter was granted resentencing in state court. Respondent moved to either stay the action or dismiss Porter's habeas petition without prejudice, stating that Porter's then-pending resentencing "will result in a new judgment" and that a dismissal "will not preclude [Porter] from timely filing a new [*3] federal habeas petition" after

his new judgment became final. (Doc. 12 in Case No. 8:19-cv-2505- SDM-AAS at 3-4). The district court agreed with Respondent's assertions and dismissed the petition "without prejudice to Porter's pursuing a new application under [Section 2254](#) after his new judgment becomes final." (Doc. 13 in Case No. 8:19-cv-2505-SDM-AAS). Now that the judgment entered on resentencing is final, Porter has filed a new [section 2254](#) petition in this case. But, as stated above, Respondent contends that the petition is untimely under *Osbourne* because his new sentence was entered nunc pro tunc to the initial sentencing.

The Court agrees with Porter's assertion that, under the circumstances, dismissing his current petition as untimely under *Osbourne* would be inequitable. The Court recognizes that the *Osbourne* decision was entered on August 7, 2020, four months after Respondent moved to dismiss or stay the earlier petition on March 30, 2020, and the dismissal was entered on April 2, 2020. Nevertheless, Respondent's motion clearly represented that Porter would obtain a new judgment that he could challenge in a subsequent habeas action, and the district court agreed with Respondent's position in granting [*4] the motion. Porter, also apparently relying on this representation that he could return to federal court after his resentencing, did not contest the dismissal of his earlier petition. Moreover, "[a] statute of limitations defense" in a [section 2254](#) case "is not jurisdictional." [Day v. McDonough, 547 U.S. 198, 205, 126 S. Ct. 1675, 164 L. Ed. 2d 376 \(2006\)](#). Given the representations in Respondent's motion to dismiss Porter's earlier petition, and because there is no jurisdictional question, Respondent's argument that the Court should dismiss Porter's current petition under *Osbourne* is unavailing.

Accordingly, Respondent must respond to the claims in Porter's petition within **45 DAYS** of the date of this order. Porter will have **30 DAYS** to reply. No extensions will be granted absent a showing of extraordinary circumstances. Respondent and Porter must comply with the directions set out in the earlier order to respond and show cause why the petition should not be granted. (Doc. 7). The **CLERK** is directed to send Porter a copy of the order to respond (Doc. 7) along with his copy of this order.

ORDERED in Tampa, Florida, on November 26, 2025. Case 8:23-cv-00441-JLB-AEP Document 26 Filed 11/26/25
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/s/ John L. Badalamenti

JOHN L. BADALAMENTI

UNITED STATES DISTRICT JUDGE

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