



post-conviction or other collateral review with respect to the pertinent judgment or claim is pending . . . ." 28 U.S.C. § 2244(d)(2).

Here, petitioner was convicted and sentenced in state court, pursuant to his guilty pleas, on three counts of driving while under the influence of alcohol, and three counts of transporting alcohol. Under the terms of his plea agreement he waived his right to direct appeal of those convictions. In fact, petitioner did not appeal.

Judgment was entered against petitioner on January 28, 2005, and the thirty day period available for him to seek direct review by the New Hampshire Supreme Court expired on February 28, 2005 (February 27, 2005, is thirty days from January 28, but fell on a Sunday). The AEDPA limitations period began to run, then, on March 1, 2005. Over ten months later, on January 19, 2006, petitioner filed a motion for post-conviction or collateral relief (to vacate his pleas, convictions and sentence) in the state court. That pleading tolled (but did not reset) the running of AEDPA's limitations period. By that point 323 days had run, leaving petitioner with 42 days in which to file his federal habeas petition.

Petitioner's post-conviction motion was finally resolved by the New Hampshire Supreme Court on December 13, 2006, which started the tolled AEDPA period running again. The federal petition had to be filed by January 25, 2007. Petitioner did not file his federal habeas petition until March 30, 2007, well after the limitations period had expired. See David v. Hall, 318 F.3d 343 (1st Cir. 2003) (explaining calculation of AEDPA limitations period).

### **Conclusion**

The petition is necessarily dismissed as untimely since it was filed beyond the expiration of AEDPA's one-year limitations period, even accounting for periods of tolling. Petitioner's motion for summary judgment (document no. 7) is denied. Respondent's motion for summary judgment (document no. 8) is granted.

**SO ORDERED.**

  
Steven J. McAuliffe  
Chief Judge

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