

PREVIEW OF FIRST THREE PAGES
OF CHAPTER NINE

AFFIRMATIVE DEFENSES [9.00.0]:

A. STATUTE OF LIMITATIONS [9.10.0]:

1. The Rule [9.11.0]: The AEDPA places a one-year limitations on the filing of federal petitions for writs of habeas corpus by state prisoners seeking relief under 28 U.S.C. § 2254, and federal prisoners seeking relief under 28 U.S.C. § 2255. The one-year limitations period begins to run from the latest of four dates: (1) the date judgment is final; (2) the date on which an impediment to filing, created by government action in violation of the federal constitution or laws, is removed; (3) the date on which a federal constitutional right (both constitutional and statutory rights for federal prisoners) is newly-recognized and made retroactively applicable by the Supreme Court; or (4) the date on which the factual predicate of the claim presented could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1); 28 U.S.C. § 2255, ¶ 6.

For state prisoners, the limitations period is statutorily tolled for the time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending. 28 U.S.C. § 2244(d)(2).

The limitations period may be equitably tolled for state and federal prisoners if the petitioner diligently pursues his claims and demonstrates that the failure to timely file was caused by extraordinary circumstances beyond his control. Each of these topics is discussed in greater detail below.

Compare: Chapter 154 of AEDPA provides a state with certain procedural benefits in federal habeas cases filed by capital defendants if the state has “opted in” to its provisions. 28 U.S.C. §§ 2261-2266. One benefit is that the capital

defendant must file his federal habeas petition within “180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2263(a).

2. Applicability [9.12.0]:

- a. State And Federal Prisoners [9.12.1]: Both state and federal prisoners are subject to a one-year limitations period. See 28 U.S.C. § 2244(d)(1) (state prisoners); 28 U.S.C. § 2255, ¶ 6 (federal prisoners).

For state prisoners, § 2244(d)(1) provides a one-year limitations period for all petitions for writs of habeas corpus filed by individuals “in custody pursuant to the judgment of a State court.” The majority of courts have concluded that § 2244(d)(1) is not limited to petitions contesting the judgment of a state court, but also includes challenges to administrative decisions by prisoners in custody pursuant to a state-court judgment, at least those affecting parole or imposing discipline. *Dulworth v. Evans*, 442 F.3d 1265, 1267-68 (10th Cir. 2006); *Shelby v. Bartlett*, 391 F.3d 1061, 1062 (9th Cir. 2004); *Cook v. New York State Div. of Parole*, 321 F.3d 274, 279-80 (2d Cir. 2003); *accord Wade v. Robinson*, 327 F.3d 328, 331 (4th Cir. 2003) (§ 2244(d) applied to prisoner’s challenge to state’s rescindment of prisoner’s good conduct credits upon his parole revocation; the statute is not limited to habeas petitions that actually challenge state court judgments, but rather encompasses all applications for writs of habeas corpus); *Kimbrell v. Cockrell*, 311 F.3d 361, 362 (5th Cir. 2002) (when a prisoner is eligible for mandatory supervised release, and when prison disciplinary proceedings result in a change in good-time earning status that extends the prisoner’s release date, the prisoner’s petition challenging such proceedings falls within § 2244(d)); *cf. McAleese v. Brennan*, 483 F.3d 206, 213 n.9 (3d Cir. 2007) (indicating that application of § 2244(d)(1) to all challenges to administrative decisions by prisoners in custody pursuant to a state-court judgment “seems

reasonable, at least with respect to a decision denying parole”). *Contra Cox v. McBride*, 279 F.3d 492, 493-94 (7th Cir. 2002) (declining to apply limitations period to petition contesting an administrative decision by a prison disciplinary board that sentenced prisoner to lose two years’ of good time credits).

For federal prisoners, § 2255 ¶ 6 provides a one-year limitations period that applies to any “prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack” 28 U.S.C. § 2255, ¶ 1.

- b. Effective Date [9.12.2]: The one-year limitations period applies to all federal petitions filed after the effective date of the AEDPA (April 26, 1996). *Lindh v. Murphy*, 521 U.S. 320, 326-27 (1997); see, *supra*, Cases Governed By AEDPA, page 94.
- c. Mischaracterizing Basis For Relief [9.12.3]: A state prisoner cannot avoid the § 2244(d) statute of limitations by mischaracterizing his federal petition as a request for habeas corpus relief under 28 U.S.C. § 2241 or *coram nobis* under the All-Writs Act, 28 U.S.C. § 1651(a). Section 2244(d)(1) applies to every “application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.” If the relief the prisoner seeks falls within this provision, the one-year limitations period applies, regardless of how the prisoner has characterized his action. *Owens v. Boyd*, 235 F.3d 356, 360 (7th Cir. 2001); *cf. Moore v. Reno*, 185 F.3d 1054, 1055 (9th Cir. 1999) (petitioners cannot use § 2241 to escape the successive petition bar); see, *supra*, State Prisoners, page 17 (discussing differences between § 2241 and § 2254).