

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

PAUL S. VARSZEGI,	:	
Petitioner	:	
	:	
v.	:	Civil Action No. 3:98CV776 (CFD)
	:	
NICHOLAS BOVE,	:	
Respondent	:	

**RULING ON MOTION FOR RECONSIDERATION AND TO REOPEN**

Pending before the Court is the plaintiff's motion for reconsideration and to reopen judgment. For the reasons set forth below, the motion for reconsideration is GRANTED, but, on reconsideration, the motion to reopen judgment is DENIED.

**I. Background**

The plaintiff filed his complaint on April 22, 1998, pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964. The plaintiff alleges that in March 1991, State of Connecticut Assistant State's Attorney Nicholas Bove charged him with larceny in the first degree and criminal coercion based on "multiple fraudulent and misleading statements" given to Stamford Police officers by Catherine Topp. At the conclusion of the trial, the plaintiff was convicted of larceny in the third degree and acquitted of the criminal coercion charge. Later in 1991, the trial judge sentenced the plaintiff to two three-year concurrent prison terms for larceny in the third degree and failure to appear in the first degree. In December 1993, the Connecticut Appellate Court reversed his conviction for larceny in the third degree. The plaintiff claims that his wrongful incarceration on the larceny charge caused him to suffer "physical, mental and emotional abuse, pain and deterioration" as well as loss of income and economic opportunity and his good standing within the community.

On July 21, 1999, this Court dismissed the plaintiff's complaint because the allegations, relating to a time period from March 1991 until December 1993, were barred by the four year statute of limitations governing civil RICO actions. On July 27, 1999, the Clerk entered judgment in the case. On August 6, 1999, the plaintiff filed a motion for reconsideration and to reopen the judgment. The plaintiff argued that the statute of limitations should be tolled because (1) in April 1996, boxes of his legal documents were confiscated and destroyed by prison officials at Garner Correctional Institution and (2) he suffers from a mental illness that required repeated hospitalizations beginning in May 1995. On March 20, 2000, the Court granted the plaintiff's motion for reconsideration, but after careful reconsideration denied the plaintiff's motion to reopen judgment without prejudice. The Court informed the plaintiff that the ruling was without prejudice "to the plaintiff providing additional evidence and legal authority in support of his tolling claims" and addressing the deficiencies set forth in the ruling. (See Doc. # 15.). The plaintiff filed the present motion to reopen judgment and for reconsideration on August 6, 2001. The plaintiff has submitted an affidavit and documentary evidence in support of his claim that the statute of limitations should be tolled to permit him to proceed with his civil RICO action.

## **II. RICO Statute of Limitations and Equitable Tolling**

As stated in the ruling dismissing the complaint, the statute of limitations for a civil RICO action is four years. See Agency Holding Corp. v. Malley-Duff & Assoc., Inc., 483 U.S. 143, 156 (1987). Under Second Circuit law, a civil RICO action accrues at the time the plaintiff discovered or should have discovered the injury resulting from the RICO violation. See Bankers Trust Co. v. Rhoades, 859 F.2d 1096, 1102 (2d Cir. 1988), cert. denied sub nom., Soifers v. Bankers Trust, Co., 490 U.S. 1007 (1989). The Second Circuit has also held that tolling

exceptions apply to civil RICO actions. See Bankers Trust, 859 F.2d at 1105. Because the applicable statute of limitations derives from federal law, federal equitable tolling doctrines apply to RICO actions. See Agency Holding Corp., 483 U.S. at 156 (Supreme Court held that the four year statute of limitations provision of the Clayton Antitrust Act, 15 U.S.C. § 15b should be applied in civil RICO actions); Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., 30 F.3d 339, 347 (2d Cir. 1994) (stating that "concerns of uniformity articulated in Agency Holding . . . dictate that federal rather than state tolling doctrines govern civil RICO actions"); Center Cadillac, Inc. v. Bank Leumi Trust Company of New York, 808 F. Supp. 213, 225 n.2 (S.D.N.Y. 1992) ("After Agency Holding, state tolling principles no longer govern civil RICO actions."), aff'd, 99 F.3d 401 (2d Cir. 1995).

Federal principles of "[e]quitable tolling allow[] courts to extend the statute of limitations beyond the time of expiration as necessary to avoid inequitable circumstances." Johnson v. Nyack Hosp., 86 F.3d 8, 12 (2d Cir. 1996). Equitable tolling "applies as a matter of fairness where a [party] has been prevented in some extraordinary way from exercising his rights." Iavorski v. INS, 232 F.3d 124, 129 (2d Cir. 2000) (internal citations and quotation marks omitted, alteration in original).

However, even "assuming that these extraordinary circumstances occurred, preventing the petitioner from filing his petition for some length of time, [the Court] must still determine whether they 'prevented him from filing his petition on time.'" Valverde v. Stinson, 224 F.3d 129, 134 (2d Cir. 2000) (quoting Smith v. McGinnis, 208 F.3d 13, 17 (2d Cir. 2000)). "Reasonable diligence is typically a factor in an equitable tolling inquiry." Valverde, 224 F.3d at 134 n.4; see Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990) (stating that the Supreme Court has "generally

been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights," and remarking that equitable tolling does not "extend to what is at best a garden variety claim of excusable neglect"); cf. Tran v. Alphonse Hotel Corp., 281 F.3d 23, 36-37 (2d Cir. 2002) (in RICO cases where plaintiff asserts that the defendant's fraudulent concealment should toll the statute of limitations, the plaintiff must establish he exercised "due diligence") (citing Klehr v. A.O. Smith Corp., 521 U.S. 179, 194-95 (1997) and quoting Corcoran v. New York Power Auth., 202 F.3d 530, 543 (2d Cir.1999), cert. denied, 529 U.S. 1109 (2000) ("Under federal common law, a statute of limitations may be tolled due to the defendant's fraudulent concealment if the plaintiff establishes that: (1) the defendant wrongfully concealed material facts relating to defendant's wrongdoing; (2) the concealment prevented plaintiff's 'discovery of the nature of the claim within the limitations period'; and (3) the plaintiff exercised due diligence in pursuing the discovery of the claim during the period plaintiff seeks to have tolled.")).

### **III. Application of Equitable Tolling Standard**

In support of his motion to reopen, the plaintiff has submitted documents indicating that on May 26, 1995, relating to a 1995 charge of assaulting a correctional officer, a state court judge found that the plaintiff was unable to understand the proceedings against him or assist in his own defense, but that there was a substantial probability that he would regain competency within ninety days. The plaintiff was referred to the Commissioner of Mental Health for treatment from May 26, 1995 through August 21, 1995. The plaintiff alleges that his competency was restored by August 21, 1995 and that the assault charges were later dismissed by the judge.

The documents also demonstrate that on July 1, 1997, relating to a 1997 charge of

threatening and harassing a state court judge, a state court judge found that the plaintiff was unable to understand the proceedings against him or assist in his own defense, but that there was a substantial probability that he would regain competency within ninety days. The plaintiff was referred to the Commissioner of Mental Health for treatment from July 1, 1997 through October 17, 1997. The plaintiff claims that his competency was restored by October 17, 1997. The plaintiff was subsequently convicted of the criminal charges and sentenced to a five year term of imprisonment. The plaintiff alleges that during these two three-month periods he was confined at the Whiting Forensic Division and had no access to his legal property or persons trained in the law.

The plaintiff has also stated in his affidavit that several boxes of his legal documents were confiscated by prison officials in April of 1996. According to the plaintiff, by March 1998, he had recreated most of his RICO file which had been confiscated in April 1996.

The Second Circuit has indicated that a corrections officer's intentional confiscation of a prisoner's legal papers can be an extraordinary circumstance sufficient to warrant equitable tolling of a limitations period. See Valverde, 224 F.3d at 133-34; Morello v. James, 810 F.2d 344, 347 (2d Cir.1987) (holding that "intentional obstruction of a prisoner's access to the courts" by means of confiscating his legal work product "is precisely the sort of oppression that [violates] the Fourteenth Amendment"). For purposes of this opinion, the Court also assumes that a court-ordered hospitalization for mental evaluation would qualify as an extraordinary circumstance sufficient to warrant equitable tolling of a limitations period.

As noted earlier, however, even "assuming that these extraordinary circumstances occurred, preventing the petitioner from filing his petition for some length of time, [the Court]

must still determine whether they ‘prevented him from filing his petition on time.’” Valverde, 224 F.3d at 134 (quoting Smith, 208 F.3d at 17). According to the Second Circuit, “the word ‘prevent’ requires the petitioner to demonstrate a causal relationship between the extraordinary circumstances on which the claim for equitable tolling rests and the lateness of his filing, a demonstration that cannot be made if the petitioner, acting with reasonable diligence, could have filed on time notwithstanding the extraordinary circumstances.” Valverde, 224 F.3d at 134; cf. Irwin, 498 U.S. at 96 (“We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights.”); Fisher v. Johnson, 174 F.3d 710, 716 (5th Cir.1999) (holding that “equity does not require tolling” “absent a showing that [the petitioner] diligently pursued his application the remainder of the time [between the extraordinary circumstance and the filing deadline] and still could not complete it on time”). “If the person seeking equitable tolling has not exercised reasonable diligence in attempting to file after the extraordinary circumstances began, the link of causation between the extraordinary circumstances and the failure to file is broken, and the extraordinary circumstances therefore did not prevent timely filing.” Id. Indeed, reasonable diligence is “required throughout the remainder of the period between the [extraordinary circumstance] and the filing.” Id. at 134 n.5.

With this standard in mind, the Court concludes that, even assuming the two three-month periods during which the state court adjudged the plaintiff incompetent to stand trial and a period of delay caused by the confiscation of his legal documents constituted a sufficient reason to toll the statute of limitations for filing this action, the plaintiff has nonetheless failed to demonstrate due

diligence in attempting to file this RICO action within the four-year limitations period.<sup>1</sup>

As noted in this Court's ruling on the plaintiff's earlier motion for reconsideration and to reopen judgment, the plaintiff was certainly aware of the claimed injuries to his health, reputation and economic position due to alleged violations of the RICO statute by Assistant State's Attorney Bove in December 1993, when the larceny conviction was reversed by the Connecticut Appellate Court. The plaintiff has provided no explanation as to why he could not file the action at some point between December 1993 and the date he allegedly was first hospitalized in an effort to restore his competency, May 26, 1995. The plaintiff was able to file motions and various documents in two other federal cases pending in this Court during that time period. In Varszegi v. O'Brien, Case no. 3:93cv1538 (AVC), the plaintiff filed four motions and one objection during this time period. In Varszegi v. Meachum, Case no. 3:93cv1474 (DFM), the plaintiff filed four motions, two affidavits, a reply memorandum and an objection to a recommended ruling during this time period. In addition, the plaintiff commenced a civil rights action in this Court on October 27, 1994, Varszegi v. Meachum, Case No. 3:95cv631 (DJS). He filed two motions in that case in early May 1995.

The plaintiff has also failed to adequately explain why he was unable to file his RICO action between August 21, 1995, the date he was restored to competency after his first hospitalization, and April 1996, when his boxes of legal documents were allegedly confiscated by prison officials.

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<sup>1</sup>While it is unclear in this context whether "equitable tolling" is a question for the jury or the court, compare Melendez-Arroyo v. Cutler-Hammer De P.R. Co., Inc., 273 F.3d 30, 39 (1st Cir. 2001) (question for judge), with Ott v. Midland-Ross Corp., 600 F.2d 24, 30-31 (6th Cir 1979) (question for jury), the Court concludes that, even assuming all of the plaintiff's evidence to be true and accurate, he has failed to present sufficient proof to send the issue of "equitable tolling" to a jury. See Smith-Haynie, v. District of Columbia, 155 F.3d 575, 579 (D.C. Cir. 1998).

On October 20, 1995, he filed a civil rights action in this Court entitled Varszegi v. Armstrong, Case No. 3:95cv2286 (DJS). Although the plaintiff alleges that the complaint was prepared and typed by “jailhouse lawyers,” the plaintiff attached to the complaint a detailed handwritten journal describing events that transpired from June 1994 through December 1994.

The Court also notes that in July 1996, Attorney John Williams appeared for the plaintiff in both Varszegi v. Armstrong, Case no. 3:95cv2286 (DJS) and Varszegi v. Meachum, 3:95cv631 (DJS). The plaintiff does not allege that he consulted with or sought assistance from Attorney Williams regarding the filing of the instant RICO complaint or re-acquiring the documents necessary to file the lawsuit. In addition, it is not clear that the plaintiff made any attempts to secure legal assistance in filing his RICO complaint from the Inmates’ Legal Assistance Program or any other legal organization. The plaintiff states in his affidavit that to his knowledge Inmates’ Legal Assistance does not “get involved in any litigation arising from any criminal cases.” He does not indicate, however, that he made any attempt to actually contact ILAP regarding his RICO complaint at any time during the limitations period or that they refused to assist him with his request.

The plaintiff alleges that in March 1998, he had recreated most of his RICO file which had been confiscated in April 1996. He does not indicate what steps he took to re-accumulate his file and what documents were necessary to enable him to file his complaint. He also alleges that in April 1998, he completed the complaint in this action and another “unrelated federal habeas corpus case no. 3:97cv910 (CFD).” He claims that both complaints were typed and had been prepared by a “Garner jailhouse lawyer and a distant relative visiting my elderly mother.” (See Varszegi Aff. at ¶ 59.) In fact, Attorney John Williams filed the petition for writ of habeas corpus in Varszegi v.

Armstrong, Case no. 3:97cv910 (CFD) on behalf of the plaintiff on May 12, 1997. Again, the plaintiff does not indicate whether in 1997 he attempted to seek assistance from Attorney Williams concerning the filing of the present RICO complaint.

Finally, even crediting the plaintiff's claims in his affidavit that corrections officers withheld certain of his documents from April 1996 to April 1998, that is not a sufficient explanation to warrant equitable tolling for that entire period. The allegations of the plaintiff's complaint could certainly have been made even without such materials based on his own experiences at his criminal trial in 1991 and the other legal research resources available to him. The allegations of his RICO complaint are not particularly complicated or based on information which would have been available to him only in the materials he claims were withheld from him. Moreover, this is unlike a situation where the draft complaint and related materials were confiscated from a prisoner near the end of the limitations period and, as a result, the prisoner would be deprived of any real opportunity to file suit. See Valverde, 224 F.3d at 132-36.

Accordingly, even assuming all of the plaintiff's evidence regarding his hospitalization for mental evaluation and the confiscation of his legal documents to be accurate, the plaintiff has not "demonstrate[d] a causal relationship between the extraordinary circumstances on which the claim for equitable tolling rests and the lateness of his filing," because it is apparent that "acting with reasonable diligence, [he] could have filed on time notwithstanding the extraordinary circumstances."<sup>2</sup> Valverde, 224 F.3d at 134.

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<sup>2</sup>Furthermore, even assuming the plaintiff had set forth sufficient facts to warrant tolling the four year statute of limitations in this case, the plaintiff has failed to set forth a valid claim under RICO. RICO provides a private right of action in 18 U.S.C. § 1964(c). That section provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court . . . ." 18

#### IV. Conclusion

For the foregoing reasons and after careful reconsideration, the plaintiff's motion to reopen judgment [Doc. # 18] is DENIED.

SO ORDERED.

Dated at Hartford, Connecticut this \_\_\_\_ day of March, 2002.

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Christopher F. Droney  
United States District Judge

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U.S.C. § 1964(c). "Section 1962 in turn makes it unlawful for 'any person'--not just mobsters--to use money derived from a pattern of racketeering activity to invest in an enterprise, to acquire control of an enterprise through a pattern of racketeering activity, or to conduct an enterprise through a pattern of racketeering activity." Sedima, S.P.R.I. v. Imrex Co., 473 U.S. 479, 495 (1985) (citing 18 U.S.C. § 1962(a)-(c)).

To state a claim under section 1964(c), a plaintiff must allege:

(1) that the defendant (2) through the commission of two or more [predicate] acts (3) constituting a "pattern" (4) of racketeering activity (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an "enterprise" (7) the activities of which affect interstate or foreign commerce.

Moss v. Morgan Stanley Inc., 719 F.2d 5, 17 (2d Cir. 1983).

In the present case, the plaintiff fails to allege any facts which would support an inference that the defendant, an Assistant State's Attorney, engaged in any racketeering activity or was involved in an enterprise which affected interstate or foreign commerce. Thus, construing the plaintiff's complaint liberally, there appears to be no factual or legal basis for a RICO claim.