

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EDDIE CARTER,)
)
Petitioner,)
)
v.) Civil Action No. 00-856-SLR
)
RAPHAEL WILLIAMS, Warden,)
and ATTORNEY GENERAL OF)
THE STATE OF DELAWARE,)
)
Respondents.)

Eddie Carter, Plummer Community Correctional Center, Wilmington, Delaware. Petitioner, pro se.

Loren C. Meyers, Esquire, Chief of Appeals Division, Delaware Department of Justice, Wilmington, Delaware.
Counsel for Respondents.

MEMORANDUM OPINION

Dated: April 2, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Petitioner Eddie Carter is a Delaware inmate in custody at the Plummer Community Correctional Center in Wilmington, Delaware. Currently before the court is petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons that follow, the court concludes that petitioner has failed to exhaust state court remedies. Accordingly, the court will dismiss his petition without prejudice.

II. BACKGROUND

In January 1989, petitioner pleaded guilty in the Delaware Superior Court to manslaughter and possession of a deadly weapon during the commission of a felony. The Superior Court sentenced petitioner on March 3, 1989, to fifteen years imprisonment. On October 3, 1998, petitioner was conditionally released.¹ Due to a violation of the conditions of release, the Delaware Board of Parole revoked petitioner's conditional release on February 15, 2000. (D.I. 14.)

Petitioner attempted to challenge the Board of Parole's revocation of his release by filing a petition for a writ of

¹ Conditional release is "the release of an offender from incarceration to the community by reason of diminution of the period of confinement through merit and good behavior credits." Del. Code. Ann. tit. 11, § 4302(5). An inmate who has been conditionally released remains "subject to the supervision of the Board [of Parole] until [he] has either served the remaining time on his sentence or is earlier discharged." Jackson v. Multi-Purpose Criminal Justice Facility, 700 A.2d 1203, 1206 (Del. 1997).

habeas corpus with the Superior Court on May 1, 2000. (Id., Petition for Writ of Habeas Corpus.) The Superior Court (Cooch, J.) denied petitioner's habeas petition for lack of jurisdiction. (Id., Superior Court Letter Order, May 9, 2000.) Petitioner did not appeal to the Delaware Supreme Court.

On September 6, 2000, while incarcerated at the Multi-Purpose Criminal Justice Facility in Wilmington, Delaware, petitioner filed with this court the current petition for a writ of habeas corpus. (D.I. 2.) In his application, petitioner asserts that the revocation of his conditional release violated his constitutional right to procedural due process, as well as Delaware's revocation procedures. (Id., ¶ 54.) With leave of the court, petitioner filed an amended petition, again alleging that the revocation of his release violated his procedural due process rights. (D.I. 16.) Petitioner has also filed a request for production of documents. (D.I. 9.) The respondents ask the court to dismiss the petition for failure to exhaust state court remedies. (D.I. 23, ¶ 7.)

III. EXHAUSTION OF STATE COURT REMEDIES

Pursuant to the federal habeas statute:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that -

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State

corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

28 U.S.C. § 2254(b)(1). Grounded on principles of comity, the requirement of exhaustion of state court remedies ensures that state courts have the initial opportunity to review federal constitutional challenges to state convictions and sentences. Werts v. Vaughn, 228 F.3d 178, 192 (3d Cir. 2000), cert. denied, 532 U.S. 980 (2001).

To satisfy the exhaustion requirement, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999). Although a state prisoner need not "invoke extraordinary remedies," he must fairly present each of his claims to the state courts. Id. at 844-45. A claim has not been fairly presented unless it was presented "at all levels of state court adjudication." Cristin v. Brennan, 281 F.3d 404, 410 (3d Cir. 2002).

Fair presentation also requires the petitioner to utilize a state procedural vehicle that affords the state courts the opportunity to consider his claims on the merits. Castille v. Peoples, 489 U.S. 346, 351 (1989). Generally, federal courts will dismiss without prejudice claims that have not been fairly presented to the state courts, thereby allowing petitioners to

exhaust their claims. Lines v. Larkins, 208 F.3d 153, 159-60 (3d Cir. 2000), cert. denied, 531 U.S. 1082 (2001).

If a claim has not been fairly presented, but further review in the state courts is procedurally barred, the exhaustion requirement is deemed satisfied because further state court review is unavailable. Lines, 208 F.3d at 160. Although deemed exhausted, such claims are nonetheless procedurally defaulted.

Id. If a claim is procedurally defaulted, federal habeas review is barred unless the petitioner demonstrates cause for the default and prejudice resulting therefrom, or a fundamental miscarriage of justice. Coleman v. Thompson, 501 U.S. 722, 750 (1991); Lines, 208 F.3d at 160. Federal courts should refrain from finding a claim procedurally barred unless further state court review is clearly foreclosed. Lines, 208 F.3d at 163.

IV. DISCUSSION

As described above, petitioner seeks to challenge on procedural due process grounds the Board of Parole's decision to revoke his release. The respondents acknowledge, and correctly so, that petitioner raised his claims in his state habeas petition. (D.I. 14, Petition.) They assert, however, that a state habeas petition is not the correct state procedural vehicle for challenging decisions of the Board of Parole. According to the respondents, challenges to decisions of the Board of Parole may be presented either to the Superior Court in a petition for a

writ of mandamus, or to the Delaware Supreme Court in a petition for a writ of certiorari. Because petitioner did not properly present his claims to the state courts, they conclude, his federal habeas petition must be dismissed for failure to exhaust state court remedies.

The first question is whether a state habeas petition is a proper procedural vehicle for challenging the Board of Parole's revocation of early release. In Delaware, "the writ of habeas corpus . . . provides relief on a very limited basis." Hall v. Carr, 692 A.2d 888, 891 (Del. 1997). It affords only "an opportunity for one illegally confined or incarcerated to obtain judicial review of the jurisdiction of the court ordering the commitment." Hall, 692 A.2d at 891. "[A]fter a judgment of conviction and a commitment pursuant to the conviction, the only material fact to be ascertained upon a petition for a writ of habeas corpus is the existence of a judgment of conviction by a court of competent jurisdiction and a valid commitment of the prisoner to enforce the sentence." Skinner v. State, 135 A.2d 612, 613 (Del. 1957).

Based on the Delaware Supreme Court's descriptions of state habeas corpus, this court is convinced that petitioner chose the incorrect procedural vehicle for challenging the Board's decision. Petitioner alleges that in revoking his release, the Board of Parole denied his right to procedural due process, not

that the Board lacked jurisdiction to revoke his release. Plainly, his claims are beyond the limited scope of state habeas review. Because petitioner selected the incorrect procedural vehicle to present his claims, he has failed to fairly present them to the state courts. Castille, 489 U.S. at 351.

The court must next consider whether petitioner's claims are now clearly foreclosed from state court review. If so, his claims are deemed exhausted yet procedurally barred. See Lines, 208 F.3d at 160. If not, his claims remain unexhausted, and his petition should be dismissed without prejudice. Id. at 159-60.

According to the respondents, two procedural vehicles are available for petitioner to raise his current claims to the state courts. The first is a petition for a writ of mandamus filed with the Superior Court. For this proposition they cite Bradley v. Delaware Parole Board, 460 A.2d 532 (Del. 1983). In Bradley, the Board of Parole conducted a hearing to determine if James Bradley was eligible for parole. Id. at 533. At the time of the hearing, Bradley was in custody in a federal penitentiary in Pennsylvania and did not receive notice of the hearing. Id. In Bradley's absence, the Board denied his request for parole. Id. Bradley challenged the Board's decision by filing a petition for a writ of mandamus with the Superior Court, arguing that the Board failed to follow its statute and regulations. Id. at 534. The Superior Court denied Bradley's petition, and the Delaware

Supreme Court affirmed. Id. at 534-35.

Certainly Bradley stands for the proposition that the Superior Court will entertain a petition for a writ of mandamus challenging a decision of the Board of Parole to deny parole. While petitioner seeks to challenge a decision revoking his conditional release rather than parole, his challenge is nonetheless closely akin to that raised in Bradley.² It thus appears that petitioner may present his claims to the Superior Court in a petition for a writ of mandamus.

Alternatively, the respondents rely on Semick v. Department of Corrections, 477 A.2d 707 (Del. 1984), to argue that petitioner may challenge the Board's decision by filing a petition for a writ of certiorari with the Delaware Supreme Court. In Semick, the Delaware Supreme Court entertained a petition for a writ of certiorari to consider whether the Board violated an inmate's constitutional rights by extending his sentence following the revocation of parole. Id. at 710. The Semick court specifically considered whether the Board's failure to conduct a preliminary hearing and a timely revocation hearing

² The Delaware Supreme Court has acknowledged that parole and conditional release are similar forms of early release. See Jackson, 700 A.2d at 1206 (finding that "once an inmate achieves early release from incarceration, there is little practical difference between the consequences of" parole and conditional release). Both conditional release and parole are "conditioned upon the inmate's compliance with all of the conditions of supervision associated with his early release from confinement." Id.

violated the inmate's constitutional right to procedural due process.³ Id. It thus appears that the Delaware Supreme Court may entertain a petition for a writ of certiorari for the purpose of raising a due process challenge to the revocation of early release.

Based on the foregoing, the court cannot conclude that state law clearly forecloses further state court review of petitioner's due process challenge to the revocation of his conditional release. Accordingly, the court finds that petitioner's claims are unexhausted, and that his petition should be dismissed without prejudice.⁴

V. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. See Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal court dismisses a habeas petition on

³ In an unpublished order, the Delaware Supreme Court recently acknowledged the viability of Semick, but without explanation. See Bruton v. State, No. 12, 2001, 2001 WL 760842, **1 n.1 (Del. May 24, 2001).

⁴ In his request for production of documents, petitioner seeks copies of transcripts of several hearings before the Board of Parole. (D.I. 9.) Because petitioner has failed to exhaust his claims, his request for production of documents will be denied as moot.

procedural grounds without reaching the underlying constitutional claims, the petitioner must demonstrate that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Id.

As discussed above, the court has concluded that petitioner must fairly present his claims to the state courts before this court will entertain his federal habeas petition. The court is persuaded that reasonable jurists would not debate whether this procedural ruling is correct. Petitioner, therefore, has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted.

VI. CONCLUSION

For the reasons stated, the court will dismiss petitioner's application for a writ of habeas corpus without prejudice, and will not issue a certificate of appealability. An appropriate order shall issue.

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O R D E R

At Wilmington, this 2nd day of April, 2002, consistent with the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Eddie Carter's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed without prejudice for failure to exhaust state court remedies.
2. Petitioner's request for production of documents (D.I. 9) is denied as moot.
3. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

Sue L. Robinson
United States District Judge