

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DANELL R. CHAMBERS, )  
 )  
 Petitioner, )  
 )  
 v. ) Civil Action No. 00-532-SLR  
 )  
 RICK KEARNEY, Warden, )  
 Sussex Correctional Institution, )  
 )  
 Respondent. )

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Danell R. Chambers, Sussex Correctional Institution, Georgetown,  
Delaware. Petitioner, pro se.

Loren C. Meyers, Esquire, Delaware Department of Justice,  
Wilmington, Delaware. Counsel for Respondent.

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**MEMORANDUM OPINION**

Dated: June 5, 2001  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

Petitioner Danell R. Chambers is an inmate at Sussex Correctional Institution in Georgetown, Delaware. Currently before the court is petitioner's application for habeas corpus relief pursuant to 28 U.S.C. § 2254.<sup>1</sup> (D.I. 2) Because petitioner is procedurally barred from raising his claims for relief, the court shall dismiss petitioner's application without reaching its merits.

**II. BACKGROUND**

On March 28, 1996, petitioner pled guilty to two counts of attempted delivery of cocaine. (D.I. 19) On September 13, 1996, the Delaware Superior Court sentenced petitioner to four years imprisonment, suspended after six months for a total of 3.5 years of confinement at a halfway house and probation. (Id.) In April 1998, the Superior Court determined that petitioner violated his probation. Consequently, the Superior Court revoked petitioner's probation and sentenced him to four years imprisonment, suspended after six months for a total of three years of confinement at a halfway house and probation. (Id.) Petitioner did not appeal to the Delaware Supreme Court. (Id.)

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<sup>1</sup>Although petitioner used the standard form for filing a complaint under 42 U.S.C. § 1983, it is clear from the nature of petitioner's arguments that he is requesting habeas relief pursuant to 28 U.S.C. § 2254.

On February 16, 2000, petitioner was accused on violating the terms of his probation. (Id.) On March 3, 2000, the Superior Court revoked petitioner's probation as to one of his convictions, sentencing him to two years imprisonment, suspended upon completion of a prison drug treatment program for one year of probation. Petitioner also did not appeal that decision. (Id.)

In his federal habeas application, petitioner challenges the reimposition of his sentence for attempted delivery of cocaine. He also claims that his probation was improperly revoked because of an unspecified error by the Superior Court, and because he completed his sentence. (D.I. 2)

### **III. DISCUSSION**

A prisoner must fully exhaust all remedies in state court before a district court may entertain his claims in a federal habeas corpus appeal. See 28 U.S.C. § 2254(b), (c); Rose v. Lundy, 455 U.S. 509, 515-20 (1982). To exhaust state remedies, a petitioner must have raised the factual and legal premises behind his claims for relief to each level of the state courts before proceeding to federal court. See Doctor v. Walters, 96 F.3d 675, 678 (3d Cir. 1996). This exhaustion requirement ensures that state courts have the first opportunity to review federal constitutional challenges to state court convictions and preserves the role of state courts in protecting federal rights.

See Caswell v. Ryan, 953 F.2d 853, 857 (3d Cir. 1992). Because petitioner has not fairly presented his federal claims to the Delaware Supreme Court, he has failed to exhaust his state remedies.

The exhaustion requirement is excused, however, where no available state corrective process exists or the particular circumstances of the case render the state process ineffective to protect the petitioner's rights. See Lambert v. Blackwell, 134 F.3d 506, 513 (3d Cir. 1997). Here, no state remedies are available to petitioner because Delaware Superior Court Criminal Rule 61(i)(3) forecloses him from seeking post-conviction relief in state court.<sup>2</sup> Petitioner, therefore, is excused from the exhaustion requirement. See Teague v. Lane, 489 U.S. 288, 297-98 (1989) (finding that because "collateral relief would be unavailable to petitioner," "fundamental fairness" required that exhaustion requirement be deemed fulfilled).

Notwithstanding this waiver of the exhaustion requirement, the court may only consider petitioner's grounds for relief if he

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<sup>2</sup>Rule 61(i)(3) provides:

Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows

(a) Cause for relief from the procedural default and

(b) Prejudice for violation of the movant's rights.

Petitioner failed to present his claims to the Delaware Supreme Court on direct appeal.

can demonstrate cause for his failure to raise them to the Delaware Supreme Court and actual prejudice, or "that failure to consider the claims will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 750 (1991). To show cause, petitioner must demonstrate that "something external to the petitioner, something that cannot fairly be attributed to him" impeded his efforts to comply with state procedural rules. Id. at 753. Such factors include interference by government officials, constitutionally ineffective assistance of counsel, or the unavailability of the factual or legal basis for a claim. See, e.g., McCleskey v. Zant, 499 U.S. 467, 494 (1991).

Petitioner's application is devoid of any showing of cause for his failure to raise his claims to the Delaware Supreme Court. Petitioner's having failed to establish cause, the court need not reach the question of whether he has suffered actual prejudice. See Coleman, 501 U.S. at 750-51.

Alternatively, the court may consider an otherwise procedurally barred claim if petitioner demonstrates that failure to do so would constitute a "miscarriage of justice." See Schlup v. Delo, 513 U.S. 298, 314-15 (1995). This exception applies only in "extraordinary cases." Id. at 321. To establish a miscarriage of justice, the petitioner must demonstrate "by clear and convincing evidence that, but for [the asserted] constitutional error, no reasonable juror would have found the petitioner eligible for the . . . penalty under the applicable

state law." Sawyer v. Whitley, 505 U.S. 333, 336 (1992). Review of the record reveals no evidence that would preclude a reasonable fact finder from determining that petitioner violated his probation, nor has petitioner demonstrated how the court's failure to consider his claims will otherwise result in a fundamental miscarriage of justice. Therefore, the court is procedurally barred from considering petitioner's claims for habeas relief.

#### **IV. CONCLUSION**

For the reasons stated, petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254 is denied. An appropriate order shall issue.

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**O R D E R**

At Wilmington, this 5th day of June, 2001, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254 (D.I. 2) is dismissed and the writ denied.

2. For the reasons stated above, petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and a certificate of appealability is not warranted. See United States v. Eyer, 113 F.3d 470 (3d Cir. 1997); 3d Cir. Local Appellate Rule 22.2 (1998).

3. Pursuant to Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts, Rick Kearney, Warden of Sussex Correctional Institution, is substituted as respondent in the case caption.

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United States District Judge