

Farnan, District Judge.

Presently before the Court is a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Joseph F. Birowski. (D.I. 2.) Also pending in this matter is Petitioner's request for a transcript. (D.I. 17.) For the reasons set forth below, the Court concludes that Petitioner's claims do not provide a basis for granting federal habeas relief. Accordingly, the Court will deny the Petition and the request for a transcript.

I. BACKGROUND

On October 5, 1998, a grand jury in the Delaware Superior Court charged Petitioner with nine counts of unlawful sexual intercourse in the first degree, and one count of continuous sexual abuse of a child. Petitioner's jury trial commenced in the Superior Court on June 22, 1999. On the first day of trial, after hearing the victim testify, Petitioner entered a plea of guilty to one count of unlawful sexual intercourse and one count of continuous sexual abuse of a child. The Superior Court sentenced Petitioner that same day to seventeen years in prison followed by a period of decreasing levels of supervision. Petitioner did not appeal to the Delaware Supreme Court. He is currently incarcerated at the Delaware Correctional Center in Smyrna, Delaware.

On February 24, 2000, Petitioner filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the

Superior Court Rules of Criminal Procedure. A Superior Court Commissioner found that Petitioner's claims of ineffective assistance were without merit and that his guilty plea was entered knowingly and voluntarily, and recommended denying the motion. State v. Birowski, No. IK98-09-0021-R1, 2001 WL 1456706 (Del. Super. Ct. Feb. 28, 2001). The Superior Court adopted the Commissioner's report and recommendation, and denied the motion. State v. Birowski, No. IK98-09-0021-R1 (Del. Super. Ct. May 16, 2001). The Delaware Supreme Court affirmed for the reasons set forth in the Commissioner's report and recommendation. Birowski v. State, No. 252, 2001, 2001 WL 874762 (Del. July 27, 2001).

Petitioner has now filed the current Petition seeking federal habeas relief. He alleges that counsel rendered ineffective assistance in several respects, and that his guilty plea was involuntary due to counsel's ineffective assistance. Respondents acknowledge that Petitioner exhausted these claims by presenting them in his postconviction proceedings, and ask the Court to deny relief on the merits.

II. STANDARDS OF REVIEW

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") mandates the following standards of review:

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 with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim -

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States . . .

28 U.S.C. § 2254(d). A federal court may issue a writ of habeas corpus under § 2254(d)(1) only if it finds that the state court decision on the merits of a claim either: (1) was contrary to clearly established federal law, or (2) involved an unreasonable application of clearly established federal law. Williams v. Taylor, 529 U.S. 362, 412 (2000).

III. DISCUSSION

A. Ineffective Assistance of Counsel

Petitioner alleges that counsel rendered ineffective assistance by refusing to file motions on his behalf, failing to contact or interview witnesses, and failing to obtain DNA testing on the victim's clothing. Because the state courts rejected Petitioner's claims of ineffective assistance on the merits, this Court's review is confined to determining whether the state courts' decision either was contrary to, or involved an unreasonable application of, clearly established federal law. 28 U.S.C. § 2254(d)(1); Williams, 529 U.S. at 412.

The clearly established federal law governing claims of ineffective assistance is the familiar two-prong test of Strickland v. Washington, 466 U.S. 668 (1984). Williams, 529 U.S. at 391. Under Strickland, a defendant claiming ineffective assistance of counsel must show (1) that counsel's performance

was deficient, and (2) a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 686, 694. In the context of challenging a guilty plea based on ineffective assistance, a defendant must show (1) that counsel's performance was deficient, and (2) a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Upon consideration of Petitioner's claims, the Court concludes that he has failed to satisfy these standards. First, the state courts' decision was not contrary to the clearly established standard set forth in Strickland and Hill. The Superior Court Commissioner, whose report and recommendation was approved by the Delaware Supreme Court, expressly cited both Strickland and Hill, and correctly articulated the governing standard. Birowski, 2001 WL 1456706 at *1-*2.

In addition, the state courts' rejection of these claims did not involve an unreasonable application of Strickland and Hill. Although Petitioner asserts that counsel should have filed motions, interviewed witnesses, and obtained DNA testing, he has offered no facts from which the Court can find a reasonable probability that he would not have pleaded guilty but for counsel's errors. He does not specify any motions counsel should have filed, nor does he explain why any such motions would have

been successful. He does not identify any specific witnesses who should have been interviewed, nor does he propose any exculpatory testimony these unnamed witnesses would have provided. He does not allege that the results of any particular DNA test would have been favorable to the outcome of his case.

In short, Petitioner's conclusory allegations are insufficient to demonstrate a reasonable probability that he would not have pleaded guilty but for counsel's errors. The Court is unable to conclude that the state courts' rejection of these claims on the merits involved an unreasonable application of Strickland and Hill. Accordingly, the Court will deny Petitioner's request for federal habeas relief as to these claims.

B. Involuntary Guilty Plea

Petitioner also alleges that his guilty plea was involuntary due to counsel's ineffective assistance. As explained above, Petitioner has failed to demonstrate that counsel rendered ineffective assistance. The Court thus concludes that the state courts' rejection of this claim is neither contrary to, nor did it involve an unreasonable application of, clearly established federal law. Accordingly, the Court will deny Petitioner's request for federal habeas relief as to this claim.

C. Request for Transcript

Petitioner also asks the Court to order a transcript of a

December 4, 1998 hearing in the Superior Court. It appears that Petitioner was originally represented by an assistant public defender who withdrew from the case due to a conflict with Petitioner. According to Petitioner, the Superior Court "pushed" a second assistant public defender to represent him, despite the conflict between Petitioner and his first attorney. He now asks the Court to order the transcript of the December 4, 1998 hearing to prove that a conflict existed between him and his first attorney.

The Court will deny Petitioner's request. Whether a conflict of interest existed between Petitioner and his first attorney is not relevant to Petitioner's claims that his second attorney rendered ineffective assistance in advising him to plead guilty. The first attorney withdrew from representation long before Petitioner entered his guilty plea. Because the Court finds that the requested transcript will not advance Petitioner's claims, the Court will deny this request.

D. 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). Where a district court has rejected the Petitioner's claims on the

merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Here, the Court has concluded that Petitioner's claims do not provide a basis for granting federal habeas relief. The Court is persuaded that reasonable jurists would not debate the correctness of its conclusions. Because Petitioner has failed to make a substantial showing of the denial of a constitutional right, the Court declines to issue a certificate of appealability.

IV. CONCLUSION

For the reasons discussed above, the Court will deny the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Joseph F. Birowski. The Court will also deny Petitioner's request for a transcript, and will not issue a certificate of appealability.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOSEPH F. BIROWSKI, :
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 Petitioner, :
 :
 v. : Civil Action No. 01-578-JJF
 :
 ROBERT SNYDER, Warden, :
 and M. JANE BRADY, :
 Attorney General of the :
 State of Delaware, :
 :
 Respondents. :

ORDER

At Wilmington, this 27 day of August 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Joseph F. Birowski's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (D.I. 2) is DENIED.
2. Petitioner's request for a transcript (D.I. 17) is DENIED.
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).

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE