

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TRACY M. JONES,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 00-850-GMS
)	
RICHARD KEARNEY, Warden, and)	
ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Following a revocation hearing in the Delaware Superior Court, Tracy M. Jones was sentenced to five years in prison for violating the terms of probation. While in custody at the Sussex Correctional Institution,¹ Jones filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his petition, Jones challenges the violation of probation (“VOP”) proceedings in the Superior Court, as well as his extradition from Maryland to Delaware prior to those proceedings. For the reasons set forth below, the court will deny the petition and the requested relief.

I. BACKGROUND

On August 16, 1995, a jury in the Delaware Superior Court found Jones guilty of several

¹ By letter dated May 27, 2001, Jones informed the court that he was in custody at the Sussex Work Release Center, but that he had “just about served this sentence.” (D.I. 25.) Because Jones has not communicated with the court since that date, the court cannot determine whether he is at the work release center, on home confinement, or on probation.

firearms offenses. The Superior Court sentenced Jones to nine years in prison suspended after four years for probation. The Delaware Supreme Court affirmed. *Jones v. State*, No. 461, 1995, 1996 WL 376937 (Del. June 28, 1996). On October 5, 1998, Jones was released from prison, and supervision of his probation was transferred to Maryland.

On February 7, 2000, a Delaware State Trooper arrested Jones in Maryland pursuant to a *capias* charging that he had violated the terms of probation. Jones was taken immediately to Delaware. Following a VOP hearing on February 18, 2000, the Superior Court determined that Jones had violated his probation, and sentenced him to five years in prison, suspended after eighteen months for home confinement followed by probation. Jones did not appeal to the Delaware Supreme Court.

On February 24, 2000, Jones filed in the Superior Court a petition for a writ of habeas corpus, which was denied on March 3, 2000. Rather than appealing, Jones filed a subsequent habeas petition with the Delaware Supreme Court on May 18, 2000. The Delaware Supreme Court dismissed Jones' petition for lack of jurisdiction. *In re Jones*, No. 231, 2000, 2000 WL 975110 (Del. June 8, 2000).

Jones has now filed the current petition seeking federal habeas relief. He also asks the court to appoint counsel to represent him in this matter.

II. GOVERNING LEGAL PRINCIPLES

A. Exhaustion and Procedural Default

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. *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, 844-45 (1999). Although a state prisoner is not required to “invoke extraordinary remedies” to satisfy exhaustion, he must fairly present each of his claims to the state courts. *Boerckel*, 526 U.S. at 845, 848. Fair presentation 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).

If a claim has not been fairly presented to the state courts, but state procedural rules preclude a petitioner from seeking further relief in the state courts, the exhaustion requirement is deemed satisfied because further state court review is unavailable. *Lines v. Larkins*, 208 F.3d 153, 160 (3d Cir. 2000), *cert. denied*, 531 U.S. 1082 (2001). Although deemed exhausted, such claims are nonetheless procedurally defaulted. *Id.* Federal courts may not consider the merits of procedurally faulted claims 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.

In order to demonstrate cause for a procedural default, a petitioner must show that “some objective factor external to the defense impeded counsel’s efforts to comply with the State’s procedural rule.” *Murray v. Carrier*, 477 U.S. 478, 488 (1986). A petitioner must also establish actual prejudice, which requires him to show “not merely that the errors at . . . trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.” *Murray*, 477 U.S. at 494.

Alternatively, a federal court may excuse a procedural default if the petitioner demonstrates that failure to review the claim will result in a fundamental miscarriage of justice. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000). The miscarriage of justice exception applies only in extraordinary cases “where a constitutional violation has probably resulted in the conviction of one who is actually innocent.” *Murray*, 477 U.S. at 496.

B. Standards of Review

Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”):

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 this provision 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).

Section 2254(d), however, applies only to claims that have been “adjudicated on the merits in State court proceedings.” 28 U.S.C. § 2254(d); *Appel v. Horn*, 250 F.3d 203, 210 (3d Cir. 2001). Thus, if the state courts did not reach the merits of the claim, the deferential standards of § 2254(d) do not apply on federal habeas review. *Jermyn v. Horn*, 266 F.3d 257, 299-300 (3d Cir. 2001); *Appel*, 250 F.3d at 210. Rather, where a state court does not adjudicate a claim on the merits, a federal habeas court “‘must examine, without special heed to the underlying state court decision,’ whether the claim has merit.” *Jermyn*, 226 F.3d at 300 (quoting *Appel*, 250 F.3d at 210).

III. DISCUSSION

In his habeas petition, Jones articulates the following claims for relief:

- (1) His arrest in Maryland and extradition to Delaware violated his right to due process.
- (2) The Superior Court failed to follow the proper procedures in his VOP proceedings in violation of his right to due process.

(D.I. 2.) The court addresses Jones’ claims in turn.

A. Extradition Proceedings

Jones first challenges his arrest in Maryland followed by immediate extradition to Delaware. According to Jones, he was not afforded any of the procedural safeguards provided by the Uniform Criminal Extradition Act, Del. Code Ann. tit. 11, §§ 2501-2530. The

respondents expressly waive the exhaustion requirement as to this claim,² and ask the court to deny this claim on the merits.

The court recognizes that Jones alleges numerous procedural errors in his arrest in Maryland and extradition to Delaware. In the context of Jones' habeas petition, however, the court need not examine each of these allegations and determine whether any violations occurred. According to the United States Supreme Court, "nothing in the Constitution [] requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will," even if he was brought to court by "forcible abduction." *Frisbie v. Collins*, 342 U.S. 519, 522 (1951). Thus, the existence of procedural defects in extradition proceedings does not impair a state's power to try an individual, and any resulting confinement does not violate his right to due process. *See Shack v. Attorney General of Pennsylvania*, 776 F.2d 1170, 1172 (3d Cir. 1985)(stating that "a procedurally defective extradition proceeding is normally an inadequate basis for collateral relief"); *United States ex rel. Kelly v. Maroney*, 414 F.2d 1228, 1230 (3d Cir. 1969)(rejecting claim for relief from confinement stemming from illegal extradition).

Here, Jones' alleged errors occurred in Maryland prior to his extradition to Delaware. Once in Delaware, he was brought before the Superior Court for a VOP hearing, at which time his probation was revoked and his sentence imposed. Even if Delaware authorities violated Jones' procedural rights in extraditing him, those errors cannot invalidate the Superior Court's VOP determination and revocation, or his sentence resulting therefrom.

² "A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement." 28 U.S.C. § 2254(b)(3).

In short, Jones' allegations of procedural errors in the extradition proceedings, even if true, do not provide a basis for federal habeas relief.³ Accordingly, his request for federal habeas relief as to this claim will be denied.

B. VOP Hearing

Jones next challenges the Superior Court's procedures in the VOP proceedings. He alleges that the Superior Court provided him with inadequate notice of the VOP hearing and his right to retain counsel, and denied him the opportunity to question adverse witnesses and present evidence on his own behalf. These errors, Jones argues, violated Rule 32.1 of the Superior Court Rules of Criminal Procedure,⁴ as well as his constitutional right to due process. In their answer, the respondents assert that Jones failed to fairly present this claim to the Delaware Supreme Court, and that it is now procedurally barred from federal habeas review.

As explained above, Jones attempted to challenge his VOP hearing by filing a habeas

³ The Third Circuit has acknowledged that certain procedural safeguards in extradition proceedings are "important," and that the denial of certain safeguards may violate 42 U.S.C. § 1983. *See Shack*, 776 F.2d at 1173.

⁴ Revocation of Partial Confinement or Probation. Whenever a person is taken into or held in custody on the grounds that the person has violated a condition of partial confinement or probation, the person shall be brought without unreasonable delay before a committing magistrate or a judge of Superior Court for the purpose of fixing bail and, if not released on bail, shall be afforded a prompt hearing before a judge of Superior Court on the charge of violation. The person shall be given:

- (A) Written notice of the alleged violation;
- (B) Disclosure of the evidence against the person;
- (C) An opportunity to appear and to present evidence in the person's own behalf;
- (D) The opportunity to question adverse witnesses; and
- (E) Notice of the person's right to retain counsel and, in cases in which fundamental fairness requires, to the assignment of counsel if the person is unable to obtain counsel.

Super. Ct. R. Crim. P. 32.1(a).

petition in the Superior Court. He then filed a habeas petition in the Delaware Supreme Court, which was dismissed for lack of jurisdiction. According to the respondents, Jones could have presented his VOP claim to the Delaware Supreme Court on direct appeal following his revocation hearing. His attempt to present this claim to the Delaware Supreme Court in a habeas petition, they contend, was procedurally incorrect, and does not constitute fair presentation for purposes of exhaustion.

The court agrees with the respondents that Jones could have presented this claim to the Delaware Supreme Court by filing a direct appeal from the Superior Court's order revoking his probation. *See, e.g., Gibbs v. State*, 760 A.2d 541 (Del. 2000)(reversing on direct appeal Superior Court's order revoking probation). The respondents are also correct that Jones' attempt to present this claim to the Delaware Supreme Court by filing a habeas petition was procedurally incorrect – as a matter of state law, the Delaware Supreme Court lacks jurisdiction to issue a writ of habeas corpus. *See In re Cantrell*, 678 A.2d 525, 526 (Del. 1996). Because Jones utilized a procedural vehicle that did not allow the Delaware Supreme Court the opportunity to consider this claim on the merits, he did not fairly present it for purposes of exhaustion. *See Castille*, 489 U.S. at 351.

Because Jones did not fairly present this claim to the Delaware Supreme Court, the court must determine whether state procedural rules preclude him from doing so at this time. If so, his claim is procedurally defaulted, and federal habeas review is barred absent a showing of cause and prejudice, or a fundamental miscarriage of justice. *See Coleman*, 501 U.S. at 750.

The respondents argue that Jones' VOP claim is procedurally barred because he failed to raise it on direct appeal. Pursuant to Superior Court Criminal Rule 61(i)(3):

Procedural Default. 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 from violation of the movant's rights.

Super. Ct. R. Crim. P. 61(i)(3). Under this rule, failure to raise an issue on direct appeal generally renders a claim procedurally defaulted absent a showing of cause and prejudice.

Bialach v. State, 773 A.2d 383, 386 (Del. 2001). Here, Jones did not pursue a direct appeal, nor has he explained why he did not. Accordingly, state court review of his federal due process claim is procedurally barred.

The only remaining question as to this claim is whether the court can excuse Jones' procedural default. Unfortunately, he offers no explanation for failing to fairly present this claim to the Delaware Supreme Court, nor does he suggest that he is actually innocent of violating the terms of probation.

In sum, the court finds that Jones did not fairly present his VOP claim to the Delaware Supreme Court, and that review of his claim by that court is now clearly foreclosed. Jones has failed to articulate any reason permitting this court to excuse his procedural default. Therefore, the court concludes that his VOP claim is procedurally barred from federal habeas review.⁵

IV. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. *See*

⁵ By letter dated May 27, 2001, Jones asks the court to appoint counsel to represent him. (D.I. 25.) Because the court has concluded that Jones' petition will be denied, the court will deny his request for appointment of counsel as moot.

Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requires the petitioner to “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 Jones’ first claim lacks merit and that his second claim is procedurally barred. The court is persuaded that reasonable jurists would not find its conclusions debatable or wrong. Jones has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Tracy M. Jones’ petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (D.I. 2) is DENIED.
2. Jones’ request for appointment of counsel (D.I. 25) 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).

IT IS SO ORDERED.

Dated: July 15, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE