IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DOUGLAS BARRON, Petitioner, v. ROBERT W. SNYDER, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE, Respondents.	)	Civil Action No. 00-86-GMS

M E M O R A N D U M A N D O R D E R

Petitioner Douglas Barron pleaded guilty in the Delaware Superior Court to several sex offenses, and was sentenced to five years in prison. He is currently incarcerated at the Delaware Correctional Center in Smyrna, Delaware. Barron has filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the court will deny Barron's petition.

I. BACKGROUND

On May 22, 1997, Barron was charged by information with multiple counts of unlawful sexual intercourse, continuous sexual abuse of a child, endangering the welfare of a child, and indecent exposure. The charges were based on Barron's activities with his stepdaughter and her friend, both under the age of fourteen. Shortly before trial, Barron and the prosecution negotiated a plea agreement under which Barron would plead guilty pursuant to *Robinson v.*

State, 291 A.2d 279 (Del. 1972),[1] to one count of continual sexual abuse of a child, two counts of endangering the welfare of a child, and one count of indecent exposure. In return, Barron would receive a sentence of five years in prison followed by six and one-half years probation.

On August 25, 1997, the day his trial was scheduled to begin, Barron appeared before the Superior Court to enter his *Robinson* plea. At the plea colloquy, Barron stated that he was not satisfied with his attorney, and that he felt forced to enter a plea because he was afraid to go to trial with his lawyer. (Tr. of Aug. 25, 1997 Hearing at 10.) The court informed Barron that his only choices were to enter the plea or proceed with trial that day. (*Id.* at 12.) Barron then entered the plea and was sentenced according to the terms of the plea agreement. Barron did not file a direct appeal to the Delaware Supreme Court.

On June 19, 1998, Barron filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. In his Rule 61 motion, Barron alleged that his guilty plea was involuntary due to the ineffective assistance of counsel. (D.I. 9, Appellant's App. at A18-A22.) According to Barron, he identified several potential witnesses whom counsel failed to interview. After appointing counsel and conducting two evidentiary hearings, the Superior Court denied Barron's Rule 61 motion on the merits. *Barron v. State*, No. Crim. A. 97-04-0591, 1999 WL 458629 (Del. Super. Ct. May 29, 1999). The Delaware Supreme Court affirmed. *Barron v. State*, No. 221, 1999, 1999 WL 1192316 (Del. Nov. 24, 1999).

Barron has now filed with the court the current habeas petition. The respondents

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[1] Pursuant to *Robinson*, a defendant need not admit his guilt in order for the trial court to accept his guilty plea, provided the plea is entered knowingly and voluntarily. *Robinson*, 291 A.2d at 281.

acknowledge that Barron exhausted his claim by presenting it in his Rule 61 proceedings, and ask the court to deny the petition on the merits.

II. STANDARDS OF REVIEW

A federal court may consider a habeas petition filed by a state prisoner only "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). 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; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

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). "A federal court may not grant a writ of habeas corpus merely because it concludes in its independent judgment that the relevant state court decision applied clearly established federal law erroneously or incorrectly." *Gattis v. Snyder*, 278 F.3d 222, 228 (3d Cir. 2002).

Specifically, a federal court may grant the writ under the "contrary to" clause only "if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set of materially indistinguishable facts." *Williams*, 529 U.S. at 412-13. The court "must first identify the applicable Supreme Court precedent and determine whether it resolves the petitioner's claim." *Werts v. Vaughn*, 228 F.3d 178, 197 (3d Cir. 2000)(citing *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 888 (3d Cir. 1999)), *cert. denied*, 532 U.S. 980 (2001). In order to satisfy the "contrary to" clause, the petitioner must demonstrate "that Supreme Court precedent *requires* the contrary outcome." *Matteo*, 171 F.3d at 888 (emphasis added).

If the petitioner fails to satisfy the "contrary to" clause, the court must determine whether the state court decision was based on an unreasonable application of Supreme Court precedent. *Id.* Under the "unreasonable application" clause, the court "may grant the writ if the state court identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner's case." *Williams*, 529 U.S. at 413. In other words, a federal court should not grant the petition under this clause "unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified under existing Supreme Court precedent." *Matteo*, 171 F.3d at 890.

Respecting a state court's determinations of fact, this court must presume that they are correct. 28 U.S.C. § 2254(e)(1). The petitioner bears the burden of rebutting the presumption of correctness by clear and convincing evidence. *Id.* The presumption of correctness applies to both explicit and implicit findings of fact. *Campbell v. Vaughn*, 209 F.3d 280, 286 (3d Cir.

2000), *cert. denied*, 531 U.S. 1084 (2001). When the state court did not specifically articulate its factual findings but denied a claim on the merits, federal courts on habeas review generally may "properly assume that the state trier of fact . . . found the facts against the petitioner." *Weeks v. Snyder*, 219 F.3d 245, 258 (3d Cir.), *cert. denied*, 531 U.S. 1003 (2000).

III. DISCUSSION

In his petition, Barron asserts that his guilty plea was involuntary due to counsel's ineffective assistance in failing to interview potential witnesses.[2] Because the state courts rejected Barron's claim of ineffective assistance on the merits, this court's review is limited to determining whether the 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). 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. *Id.* 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). As explained below,

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[2] Barron does not articulate any specific claims in his petition; rather, he refers to the "attached exhibits." (D.I. 2 at 5.) Attached to his petition are several pages from the Superior Court's order denying his Rule 61 motion. The court thus assumes that Barron now raises the same claim of ineffective assistance that he presented in his Rule 61 proceedings.

Barron has failed to satisfy these standards.

In rejecting Barron's claim, the Superior Court first recited the *Strickland* standard. *Barron*, 1999 WL 458629 at *2. Although the Superior Court did not cite *Hill*, the court stated that to establish prejudice, Barron must show that counsel's errors "truly impacted on the defendant's decision to enter a guilty plea." *Id.* This court readily concludes that the Superior Court applied the correct legal standard in resolving Barron's claim.

Thus, the relevant inquiry is whether the Superior Court's application of the legal standard to the facts of Barron's case was objectively unreasonable. After conducting two evidentiary hearings, the Superior Court wrote:

> In summary, the defense has made much of whether the defendant's attorney interviewed this witness or that witness, but the bottom line is that the witnesses who were interviewed prior to the plea did not help the defense and there has been no showing that other witnesses would have materially assisted the defense.
>
> I am satisfied from an objective viewpoint the defendant cannot show any prejudice arising from his claims of ineffective assistance of counsel and therefore, his claim of an involuntary guilty plea based on ineffective counsel fails.

Id. at *3.

Unfortunately, Barron has failed to provide the court with any basis for concluding that the Superior Court unreasonably applied the legal standard to the facts of his case. He has failed to identify any testimony from any potential witness that could have persuaded him not to plead guilty. As a matter of fairness to Barron, the court has independently reviewed Barron's Rule 61 motion, his brief submitted on appeal to the Delaware Supreme Court, and the excerpts of the transcripts of the Rule 61 hearings filed with the Delaware Supreme Court. (D.I. 9) The court has reviewed the testimonies of Barron's potential witnesses, including Lorrie Barron, Mark

Smith, and George Bradford. (Tr. of Dec. 22, 1998 Hearing.) This court simply cannot find any testimony proffered by these witnesses that would have been helpful to Barron's defense.

The court has also reviewed the testimonies of Barron's former attorney, the investigator who assisted him, and Barron himself. Barron's former attorney, Edward S. Callaway, testified that Barron provided him with a list of witnesses and their proposed testimonies, which he reviewed with Barron. (*Id.* at A27.) Callaway also testified that he felt that none of the potential witnesses would offer testimony to contradict the victims' testimonies. (*Id.* at A30.) Callaway's investigator, Donald Smythe, testified that he was unable to locate some of the witnesses, and that those he located offered testimony that was unfavorable to Barron. (Tr. of May 7, 1999 Hearing at B18-B19.) While Barron testified that he would not have pleaded guilty if counsel had interviewed the witnesses, (*Id.* at B11-B12), he failed to identify any specific testimony to support his contention.

Based on a careful review of the record, this court is unable to discern any basis for concluding that the Superior Court unreasonably applied the legal standard to the facts of Barron's case. Rather, the court finds that the Superior Court's rejection of Barron's claim of ineffective assistance is entirely reasonable.

In short, the court concludes that Superior Court's decision is neither contrary to, nor did it involve an unreasonable application of, clearly established federal law. For this reason, federal habeas relief will be denied.

IV. 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 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 Barron has failed to establish that counsel rendered ineffective assistance by failing to interview potential witnesses. The court is persuaded that reasonable jurists would not find its conclusions debatable or wrong. Barron 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. Douglas Barron's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (D.I. 2) is DENIED.

2. 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: April 10 , 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE