

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

JOSEPH WALLING,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-206-GMS
)	
VINCENT BIANCO, Warden, and)	
ATTORNEY GENERAL OF)	
THE STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Petitioner Joseph Walling pleaded guilty in the Delaware Superior Court to possession of heroin with intent to deliver, and was sentenced to three years in prison. Currently before the court is Walling’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. At the time he filed his habeas petition, Walling was in custody at the Central Violation of Probation Center in Smyrna, Delaware. For the reasons that follow, the court finds that federal habeas relief is unavailable as to Walling’s claims, and will deny his habeas petition.

I. BACKGROUND

On January 3, 2000, a grand jury in the Delaware Superior Court charged Joseph Walling with trafficking in heroin, possession of heroin with intent to deliver, and using a vehicle for keeping controlled substances. The Superior Court appointed David Facciolo, an assistant public defender, to represent Walling. On June 15, 2000, Facciolo withdrew, and Walling retained attorney James Natalie to represent him. Upon Natalie’s advice, Walling pleaded guilty on

January 17, 2001, to possession of heroin with intent to deliver. The Superior Court (Gebelein, J.) sentenced Walling that same day to three years in prison, suspended after three months for various levels of supervision. Walling did not appeal to the Delaware Supreme Court.

On February 28, 2001, Walling filed in the Superior Court a petition for a writ of habeas corpus, alleging that the Delaware Department of Correction was unlawfully executing his sentence. The Superior Court concluded that the petition was “without merit” and denied it. *State v. Walling*, Civ. A. No. 01M-02-093RSG (Del. Super. Ct. Apr. 4, 2001). Again Walling did not appeal to the Delaware Supreme Court.

Walling has now filed the current petition for federal habeas relief. In his petition, Walling claims that the evidence against him was obtained by an unlawful search and seizure in violation of his rights under the Fourth Amendment. (D.I. 2 at 5.)

II. DISCUSSION

The federal habeas statute authorizes district courts to entertain an application for a writ of habeas corpus 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). Where a criminal defendant has pleaded guilty on the advice of counsel, the scope of the federal habeas inquiry is limited to examining “the nature of the advice and the voluntariness of the plea.” *Tollett v. Henderson*, 411 U.S. 258, 266 (1973). For this reason, once an individual has admitted in court that he is guilty, “he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *Id.* at 267.

Specifically, “a Fourth Amendment claim ordinarily may not be raised in a habeas

proceeding following a guilty plea.” *Haring v. Prosise*, 462 U.S. 306, 321 (1983). As the United States Supreme Court has explained, the validity of a conviction obtained pursuant to a guilty plea “cannot be affected by an alleged Fourth Amendment violation because the conviction does not rest in any way on evidence that may have been improperly seized.” *Id.*

An examination of Walling’s petition reveals that his Fourth Amendment claims fall beyond the scope of federal habeas review. The record demonstrates that Walling pleaded guilty in the Superior Court to possession of heroin with intent to deliver. His conviction was based solely on his guilty plea, not on any evidence that may have been improperly seized. Thus, even if the court found that a Fourth Amendment violation occurred, such a finding would not undermine Walling’s conviction. For this reason, the court concludes that Walling’s Fourth Amendment claims are beyond the scope of federal habeas review.

The court notes that Walling asserts in his response that Facciolo “misdirected him” as to the validity of his Fourth Amendment claims. (D.I. 12, ¶ 4.) To the extent that Walling suggests that Facciolo rendered ineffective assistance in violation of the Sixth Amendment, the record establishes that Facciolo was permitted to withdraw on June 15, 2000. Seven months later, on January 17, 2001, Walling entered his guilty plea on the advice of his privately-retained attorney, James Natalie. Walling fails to explain how Facciolo’s advice wrongly induced him to plead guilty, when Facciolo withdrew from representing Walling seven months earlier. Natalie, not Facciolo, represented Walling at the time he entered his guilty plea, and nowhere does Walling criticize Natalie’s advice. To the extent that Walling may be claiming that his guilty plea is invalid due to counsel’s erroneous advice, the court rejects this claim as lacking any factual basis.

In short, because he pleaded guilty, Walling’s Fourth Amendment claims are beyond the scope of federal habeas review. Accordingly, the court will deny his petition.¹

III. 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 Walling’s claims do not provide a basis for granting federal habeas relief. The court is persuaded that reasonable jurists would not find its conclusion debatable or wrong. Walling has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

¹The court acknowledges the respondents’ argument that *Stone v. Powell*, 428 U.S. 465 (1976), bars Walling’s Fourth Amendment claims on federal habeas review. Under *Stone*, even “potentially meritorious Fourth Amendment claims are barred on habeas when the petitioner had a full and fair opportunity to litigate them” in the state courts. *Deputy v. Taylor*, 19 F.3d 1485, 1491 (3d Cir. 1994)(citing *Stone*, 428 U.S. at 494). Nothing in the sparse record suggests that Walling attempted to litigate his Fourth Amendment claims in the state courts, or that he was denied such an opportunity. Because the record is not developed as to Walling’s opportunity to litigate his Fourth Amendment claims in the state courts, the court declines to consider whether Walling’s claims are barred by *Stone*.

The court also acknowledges the respondents’ argument that Walling’s claims are procedurally barred because he never presented them to the Delaware Supreme Court. The court need not make such a determination because Walling has failed to articulate any claims within the scope of federal habeas review. *Cf. Tillett v. Freeman*, 868 F.2d 106, 108 (3d Cir. 1989) (stating that district court erred in dismissing non-cognizable claim for failure to exhaust).

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Joseph Walling's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 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: September 4, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE