IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FRANCIS EDWARD VEASEY, Petitioner, v. BLAINE CONNOR, Warden, ATTORNEY GENERAL OF THE STATE OF DELAWARE, and ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA, Respondents.	)	Civil Action No. 01-523-GMS

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

I. BACKGROUND

On March 1, 1996, Amtrak police arrested Francis Edward Veasey in Wilmington, Delaware, for disorderly conduct. Veasey appeared before the Municipal Court for the City of Wilmington on April 11, 1996, and pleaded guilty to disorderly conduct. The Municipal Court sentenced Veasey to thirty days imprisonment, effective March 1, 1996. Veasey was subsequently arrested based on a fugitive warrant lodged as a detainer by authorities in Philadelphia. On June 10, 1996, Delaware authorities delivered Veasey to the Philadelphia police. Veasey is currently serving a Pennsylvania sentence at the State Correctional Institution-Greene in Waynesburg, Pennsylvania.

On July 27, 2001, Veasey filed in this court the current petition for a writ of habeas

corpus pursuant to 28 U.S.C. § 2254.[1] (D.I. 1.) In his petition, Veasey alleges that: (1) counsel coerced him to plead guilty to disorderly conduct; (2) he was illegally placed in Pennsylvania custody because he was not the individual named in the fugitive warrant and detainer; (3) the order of extradition was illegally obtained pursuant to the unlawful arrest on March 1, 1996; (4) his Pennsylvania conviction, based the same facts as his Delaware charges, constitutes double jeopardy; and (5) the extradition proceedings were illegal, and his Pennsylvania conviction is unlawful. (D.I. 1, 22.)

The respondents ask the court to dismiss Veasey's habeas petition for lack of jurisdiction because at the time he filed it, he was not in custody pursuant to the 1996 disorderly conduct conviction. For the reasons that follow, the court agrees with the respondents and will dismiss the petition.

II. DISCUSSION

A federal district court has jurisdiction to entertain a petition for a writ of habeas corpus only if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §§ 2241(c)(3), 2254(a); *Maleng v. Cook*, 490 U.S. 488, 490 (1989). To invoke federal habeas jurisdiction, the petitioner must be "in custody" pursuant to the conviction or sentence under attack at the time he filed his petition. *Maleng*, 490 U.S. at 490-91 (citing *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968)); *Young v. Vaughn*, 83 F.3d 72, 73 (3d Cir. 1996). Although the "in custody" prerequisite has been liberally construed, a petitioner who

[1] Veasey's petition was originally assigned to the Honorable Roderick R. McKelvie, but was reassigned to this court on October 16, 2002.

suffers no present restraint from a particular conviction is not "in custody" for the purpose of invoking federal habeas jurisdiction to challenge that conviction. *Maleng*, 490 U.S. at 492.

In his current habeas petition, Veasey challenges his 1996 Delaware conviction for disorderly conduct.[2] He readily concedes that his sentence for disorderly conduct expired on March 30, 1996. (D.I. 39.) He argues, however, that he is in custody for purposes of challenging his 1996 conviction because his unlawful arrest and conviction in Delaware allowed Pennsylvania authorities to assemble and file charges against him. In other words, but for his unlawful arrest and conviction in Delaware, he would never have been convicted in Pennsylvania.

Whether Veasey would have been convicted in Pennsylvania absent his 1996 disorderly conduct conviction is entirely speculative. Regardless, even if his Delaware conviction somehow facilitated his Pennsylvania conviction, he may not rely on his custody in Pennsylvania to satisfy the "in custody" prerequisite for challenging his Delaware conviction. As the United States Supreme Court has explained, if a state conviction "is no longer open to direct or collateral attack in its own right because the defendant failed to pursue those remedies while they were available (or because the defendant did so unsuccessfully), then that defendant is without recourse." *Daniels v. United States*, 532 U.S. 374, 382 (2001). Even where a state conviction was used to enhance a subsequent federal or state sentence, a defendant may not challenge the prior state conviction if he is no longer in custody pursuant to the prior sentence, either through a

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[2] To the extent that Veasey may be attempting to challenge his Pennsylvania conviction, this court is without authority to entertain such claims. *See* 28 U.S.C. § 2241(a). Any habeas petition challenging Veasey's Pennsylvania conviction must be filed in the appropriate district court in Pennsylvania. *See* 28 U.S.C. § 2241(d). The court does not address whether federal habeas procedures permit Veasey to file such a petition at this point in time.

motion to vacate his federal sentence or through a habeas petition. *Id.*; *Lackawanna County District Attorney v. Coss*, 532 U.S. 394, 403-04 (2001). The only exception to this rule is "where there was a failure to appoint counsel in violation of the Sixth Amendment, as set forth in *Gideon v. Wainwright*, 372 U.S. 335 (1963)." *Coss*, 532 U.S. at 404; *Daniels*, 532 U.S. at 382.

Here, Veasey acknowledges that his 1996 sentence expired years before he filed the current habeas petition. He makes no allegation that he was denied counsel in violation of *Gideon*. The court thus finds that Veasey was not in custody pursuant to his 1996 conviction and sentence at the time he filed the current habeas petition. Because Veasey cannot satisfy the "in custody" requirement, the court will dismiss his petition for lack of subject matter jurisdiction.[3]

III. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. *See* Third Circuit Local Appellate Rule 22.2. A certificate of appealability may issue 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).

As explained above, the court has concluded that it lacks jurisdiction over Veasey's

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[3] Also pending in this matter is Veasey's motion to amend his petition, along with his proposed amendment, which he filed before the respondents served their answer. (D.I. 22.) His motion to amend is unnecessary. *See* Fed. R. Civ. P. 15(a)(allowing a party to amend his pleading once as a matter of course at any time before a responsive pleading is served); *Riley v. Taylor*, 62 F.3d 86, 89-90 (3d Cir. 1995)(applying Rule 15(a) to habeas petitions). Thus, the motion to amend will be granted. The court has considered Veasey's proposed amendment in rendering its decision.

habeas petition because he was not in custody at the time he filed it. The court is persuaded that reasonable jurists would not find its assessment debatable or wrong. Veasey has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Francis Edward Veasey's motion to amend his petition (D.I. 22) is GRANTED.

2. Veasey's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, as amended, is DISMISSED for lack of subject matter jurisdiction.

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: October 17, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE