

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

ALEXANDER ODOM,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ. A. No. 02-1279-KAJ
	)	
THOMAS CARROLL, Warden,	)	
	)	
Respondent.	)	

**MEMORANDUM OPINION**

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Alexander Odom. *Pro se* Petitioner.

Thomas E. Brown, Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware. Attorney for Respondent.

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February 23, 2005  
Wilmington, Delaware

**JORDAN, District Judge**

**I. INTRODUCTION**

Petitioner Alexander Odom is presently incarcerated at the Delaware Correctional Facility (“D.C.C.”) in Smyrna, Delaware. Odom 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, I will dismiss his petition. (D.I. 2.)

**II. PROCEDURAL AND FACTUAL BACKGROUND**

In August 1999, an undercover police officer with the Dover Police Department purchased \$20 worth of crack cocaine from Odom. The purchase took place within a thousand feet of a school. (D.I. 11, Jan. 31, 2000 Sentencing Transcript, ID. NO. 9909005059, at 48-9).

On September 7, 1999, a Delaware Superior Court grand jury indicted Odom for the offense of delivery of cocaine (16 Del. C. Ann. § 4751(a)) and delivery of a controlled substance within 1000 feet of a school (16 Del. C. Ann. § 4767). Odom, represented by counsel, pled guilty to the delivery of cocaine charge. In return, the State entered a *nolle prosequi* as to the remaining charge. The Superior Court immediately sentenced Odom to twenty years in prison, suspended for probation after a mandatory minimum of 15 years incarceration. Odom did not file a direct appeal of his conviction or sentence.

In April 2000, Odom filed a *pro se* motion for state post-conviction relief pursuant to Rule 61 of the Delaware Superior Court Rules of Criminal Procedure (“Rule 61 motion”). The Superior Court referred the motion to a commissioner, who concluded in a Report and Recommendation that Petitioner’s Rule 61 motion should be denied. After conducting a *de novo*

review, the Superior Court adopted the Report and Recommendation, and denied Odom’s Rule 61 motion. *State v. Odom*, 2001 WL 337229 (Del. Super. Ct. Mar. 23, 2001). The Delaware Supreme Court affirmed this decision on post-conviction appeal. *Odom v. State*, 2001 WL 1388543 (Del. 2001).

### **III. GOVERNING LEGAL PRINCIPLES**

#### **A. The Antiterrorism And Effective Death Penalty Act Of 1996**

Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) “to reduce delays in the execution of state and federal criminal sentences . . . and to further the principles of comity, finality, and federalism.” *Woodford v. Garceau*, 538 U.S. 202, 206 (2003)(internal citations and quotation marks omitted). Pursuant to AEDPA, 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). AEDPA increases the deference federal courts must give to state court decisions, primarily by imposing procedural requirements and standards for analyzing the merits of a habeas petition. *See Woodford*, 538 U.S. at 206. Generally, AEDPA “modified a federal habeas court’s role in reviewing state prisoner applications in order to prevent federal habeas ‘retrials’ and to ensure that state-court convictions are given effect to the extent possible under law.” *Bell v. Cone*, 535 U.S. 685, 693 (2002).

#### **B. Exhaustion and Procedural Default**

Absent exceptional circumstances, a federal court cannot grant federal habeas relief unless the petitioner has exhausted all means of available relief under state law. 28 U.S.C. §

2254(b); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842-44 (1999); *Picard v. Connor*, 404 U.S. 270, 275 (1971). AEDPA states, in pertinent part:

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).

The exhaustion requirement is based on principles of comity, requiring a petitioner to give “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*, 526 U.S. at 844-45; *Werts v. Vaughn*, 228 F.3d 178, 192 (3d Cir. 2000); 28 U.S.C. § 2254(c)(A petitioner “shall not be deemed to have exhausted remedies available . . . if he has the right under the law of the state to raise, by any available procedure, the question presented”). A petitioner must demonstrate that he fairly presented the habeas claim to the state’s highest court, either on direct appeal or in a post-conviction proceeding. *See Lambert v. Blackwell*, 134 F.3d 506, 513 (3d Cir. 1997)(citations omitted); *Coverdale v. Snyder*, 2000 WL 1897290, at \*2 (D. Del. Dec. 22, 2000). “‘Fair presentation’ of a claim means that the petitioner ‘must present a federal claim’s factual and legal substance to the state courts in a manner that puts them on notice that a federal claim is being asserted.’” *Holloway v. Horn*, 355 F.3d 707, 714 (3d Cir. 2004)(citing *McCandless v. Vaughn*, 172 F.3d 255, 261 (3d Cir. 1999)).

A petitioner’s failure to exhaust state remedies will be excused if state procedural rules preclude a petitioner from seeking further relief in state courts. *Lines v. Larkins*, 208 F.3d 153,

160 (3d Cir. 2000); *Wenger v. Frank*, 266 F.3d 218, 223 (3d Cir. 2001); see *Teague v. Lane*, 489 U.S. 288, 297-98 (1989). Although the failure to exhaust state remedies may be excused, unexhausted claims are still procedurally defaulted. *Lines*, 208 F.3d at 160. Similarly, if a state court refused to consider a petitioner's claims for failing to comply with an independent and adequate state procedural rule, the claims are deemed exhausted but procedurally defaulted. *Harris v. Reed*, 489 U.S. 255, 263 (1989); *Werts*, 228 F.3d at 192.

Federal courts may not consider the merits of procedurally defaulted claims unless the petitioner demonstrates either cause for the procedural default and actual prejudice resulting therefrom, or that a fundamental miscarriage of justice will result if the court does not review the claim. *McCandless v. Vaughn*, 172 F.3d 255, 260 (3d Cir. 1999); *Coleman v. Thompson*, 501 U.S. 722, 750-51 (1999); *Caswell v. Ryan*, 953 F.2d 853, 861-62 (3d Cir. 1992). 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 can demonstrate actual prejudice by showing "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." *Id.* 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); *Wenger v. Frank*, 266 F.3d 218, 224 (3d Cir. 2001). A petitioner demonstrates a miscarriage of justice by showing a "constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray*, 477 U.S. at

496. Actual innocence means factual innocence, not legal insufficiency, *Bousley v. United States*, 523 U.S. 614, 623 (1998), and is established if no reasonable juror would have voted to find the petitioner guilty beyond a reasonable doubt. *Sweger v. Chesney*, 294 F.3d 506, 522-24 (3d Cir. 2002).

### **C. Standard Of Review Under AEDPA**

After determining that a federal habeas claim is exhausted and any procedural default has been excused, a federal habeas court can only grant habeas relief when the state court's 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)(1),(2); *Williams v. Taylor*, 529 U.S. 362, 412 (2000); *Appel v. Horn*, 250 F.3d 203, 210 (3d Cir. 2001). A state court has adjudicated a claim on the merits for the purposes of 28 U.S.C. § 2254(d) if the state court “decision finally resolv[es] the parties’ claims, with res judicata effect, [and] is based on the substance of the claim advanced, rather than on a procedural, or other ground.” *Rompilla v. Horn*, 355 F.3d 233, 247 (3d Cir. 2004)(internal citations omitted).

AEDPA also requires a federal court to presume that a state court's determinations of factual issues are correct. 28 U.S.C. § 2254(e)(1). A petitioner can only rebut this presumption of correctness by clear and convincing evidence. *Id.*; *Miller-El*, 537 U.S. at 341 (stating that the clear and convincing standard in § 2254(e)(1) applies to factual issues, whereas the unreasonable application standard of § 2254(d)(2) applies to factual decisions). This presumption of

correctness applies to both explicit and implicit findings of fact. *Campbell v. Vaughn*, 209 F.3d 280, 286 (3d Cir. 2000).

#### **IV. DISCUSSION**

##### **A. Claim One is Procedurally Barred**

Odom's first claim asserts that the Delaware Superior Court abused its discretion during the plea colloquy by failing to inquire into his dissatisfaction with his counsel. Odom initially raised this issue in his Rule 61 motion to the Delaware Superior Court. The State correctly asserts that Odom exhausted state remedies by presenting this claim to the Delaware Supreme Court in his post-conviction appeal. Nevertheless, the State contends that federal habeas review is precluded because the Delaware state courts rejected the claim on an independent and adequate state procedural ground.

After reviewing the record, I find that federal habeas review is procedurally barred. Both the Superior Court and the Delaware Supreme Court explicitly found the claim procedurally defaulted under Delaware Superior Court Rule 61(i)(3). *Odom*, 2001 WL 337229, at \*1, \*3 (Odom did not assert the claim on direct appeal and he failed to "present any evidence showing cause for relief or prejudice from violation of his rights"); *Odom*, 2001 WL 1388543, at \*\*1; *see* Del. Super. Ct. Crim. R. 61(i)(3) ("any ground for relief that was not asserted in the proceedings leading the to the judgment of conviction . . . is thereafter barred" absent a showing of cause and prejudice). The dismissal under Rule 61(i)(3) constituted a plain statement that the courts' decisions rested on state law grounds. *Harris v. Reed*, 489 U.S. 255, 23-65 (1969); *see Ylst v. Nunnemaker*, 501 U.S. 797 (1991). This Court has consistently held that Delaware Superior Court Criminal Rule 61 is an independent and adequate state ground precluding federal habeas

review.<sup>1</sup> *See Maxion v. Snyder*, 2001 WL 848601, at \*10 (D. Del. July 27, 2001)(all sub-parts of Rule 61 constitute independent and adequate state procedural grounds); *Dawson v. Snyder*, 988 F. Supp. 783, 804 (D. Del. 1997). As such, I cannot provide federal habeas review of this claim unless Odom can establish cause for his procedural default and actual prejudice resulting therefrom, or that a miscarriage of justice will result if I refuse to review these claims. *See* 28 U.S.C. § 2254(a); *Coleman v. Thompson*, 501 U.S. 722, 750-51 (1991); *Caswell v. Ryan*, 953 F.2d 853, 860-61 (3d Cir. 1992).

Odom does not allege, nor does the record reveal, any cause for his failure to raise this claim on direct appeal. In the absence of cause, I do not need to reach the question of prejudice. *See Smith v. Murray*, 477 U.S. 527, 533 (1986). Nevertheless, Odom cannot demonstrate actual prejudice because this claim is meritless. The record clearly reveals that the Superior Court fully

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<sup>1</sup>Both state courts also rejected this claim as meritless. As long as the state court explicitly invokes “a state procedural bar rule as a separate basis for decision,” an alternative holding on the merits does not preclude a federal habeas court from finding the claim procedurally barred on the basis of an independent and adequate state procedural ground. *See Johnson v. Pinchak*, 392 F.3d 551, 558 (3d Cir. 2004). Here, the Delaware courts explicitly invoked Rule 61(i)(3) as barring further review of the claim. Thus, I conclude that the Delaware state courts rejected this claim on the basis of an independent and adequate state procedural ground. Nevertheless, I do discuss the fact that this claim is without merit in my discussion regarding prejudice, *infra* note 2.



reviewed Odom's dissatisfaction with defense counsel during the plea colloquy.<sup>2</sup> Consequently, Odom cannot establish the requisite prejudice to excuse his default.

Finally, Odom has not alleged that he is actually innocent, nor has he presented any colorable evidence of his actual innocence. Thus, he has not demonstrated that a fundamental miscarriage of justice will result from failure to review this claim. As a result, federal habeas review of Odom's abuse of discretion claim is not available.

**B. Claim Two Does Not Warrant Federal Habeas Relief Under § 2254(d)(1)**

Odom's second claim is based on a discrepancy between the weight of crack cocaine delivered to the undercover police officer as listed in the police report and the Medical Examiner's report. The police report listed the weight of crack as .02 grams, but the Medical Examiner's Report listed the weight as .18 grams. Odom alleges that his counsel provided ineffective assistance by failing to investigate the admissibility of these conflicting documents.

Although Odom did not raise this claim in his Rule 61 motion presented to the Superior Court, he did raise it in his appeal of the Superior Court's denial of his Rule 61 motion. The Delaware Supreme Court rejected this claim as meritless. Thus, I must determine whether the

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<sup>2</sup>Defense counsel asked the court to inquire into Odom's dissatisfaction with his representation, pointing to the fact that Odom had answered "no" on his guilty plea form in response to the question of whether he was satisfied with his lawyer's representation. (D.I. 11, Jan. 31, 2001 Sentencing Transcript, ID. NO. 9909005059, at 46-7.) When questioned, Odom told the court that he was dissatisfied with defense counsel because he wanted a better deal. *Id.* at 48. The court then asked the State to outline the evidence it expected to present at trial. The State outlined its case, and also explained that Odom faced a potential life sentence as an habitual offender because of his extensive history of drug offenses. The court told Odom that he could reject the plea and proceed to trial, but noted that the plea agreement "probably [was] not an unreasonable resolution" for Odom based on his potential life sentence. *Id.* at 56. Odom then "stated unequivocally that he did not want to go to trial and believed the plea agreement was the best result he could obtain under the circumstances." *Odom*, 2001 WL 1388543, at \*\* 1; *see also* D.I. 11, Jan. 31, 2001 Sentencing Transcript, ID. NO. 9909005059, at 56.

Delaware Supreme Court's adjudication of this claim was either contrary to, or involved an unreasonable application of, clearly established federal law as determined by the United States Supreme Court precedent. *See* 28 U.S.C. § 2254(d)(1).

The "clearly established federal law" governing ineffective assistance of counsel claims is the standard enunciated by *Strickland v. Washington*, 466 U.S. 668 (1984) and its progeny. *See Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 2535, 156 L.Ed.2d 471 (2003). To prevail on a claim of ineffective assistance of counsel where the petitioner entered a plea agreement, the petitioner must demonstrate both that: 1) counsel's performance fell below an objective standard of reasonableness; and 2) counsel's deficient performance actually prejudiced the petitioner's case; in other words, there is a reasonable probability that, but for counsel's faulty performance, the petitioner would not have pled guilty and he would have insisted on going to trial. *Strickland*, 466 U.S. at 687-88, 692-94; *Hill v. Lockhart*, 474 U.S. 52, 57-9 (1985); *Marshall v. Hendricks*, 307 F.3d 36, 85 (3d Cir. 2002); *Weeks v. Snyder*, 219 F.3d 245, 257 (3d Cir. 2000).

Here, the Delaware Supreme Court determined that "[t]here is no support in the record for a claim that, but for his counsel's alleged errors, Odom would not have pleaded guilty and would have insisted on going to trial." Thus, the Delaware Supreme Court's denial of Odom's ineffectiveness claim is not "contrary to" *Strickland v. Williams*, 529 U.S. at 406 ("[A] run-of-the-mill state-court decision applying the correct legal rule from [Supreme Court] cases to the facts of a prisoner's case [does] not fit comfortably within § 2254(d)(1)'s 'contrary to' clause").

I must also determine whether the state court's rejection of Odom's ineffectiveness claim constitutes an "unreasonable application of" *Strickland*. *See* 28 U.S.C. 2254(d)(1). Under this prong of § 2254(d)(1), I need to objectively evaluate the state court decision on the merits, and

determine whether the state courts reasonably applied the *Strickland* standard to the facts of Odom's case. See *Williams*, 529 U.S. at 412-13; *Matteo*, 171 F.3d at 891.

The Delaware Supreme Court rejected Odom's claim for two reasons. First, it determined that the prejudice prong of *Strickland* was not satisfied because there was no indication that Odom would not have pled guilty and that he would have proceeded to trial if his counsel did, in fact, investigate the discrepancy between the reported weights. Second, the court reviewed the record and concluded that Odom had entered "his guilty plea freely and voluntarily . . . [thereby] waiv[ing] any alleged defects or errors occurring prior to the entry of the plea." *Odom*, 784 A.2d 1081, at \*\*1.

After reviewing the record, I conclude that the Delaware Supreme Court's decision was not an unreasonable application of *Strickland*. The plea colloquy clearly reveals that Odom entered his plea voluntarily. As such, as stated by the state courts, he waived any claims of ineffective assistance arising prior to his plea. See *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *Lesko v. Lehman*, 925 F.2d 1527, 1537 (3d Cir. 1991). Moreover, during the plea colloquy, the State clearly asserted that Odom sold "[p]oint 2 grams [of crack cocaine to the undercover officer], point one eight when the Medical Examiner's office measured it," not .02 grams (as stated in the police report). (D.I. 11, Jan. 31, 2001 Sentencing Transcript, ID. NO. 9909005059, at 49). When asked by the court if he agreed with the State's rendition of the facts, Odom replied "yes," and he never independently raised the issue of weight. Interestingly, even when Odom raised his generic dissatisfaction with his counsel's representation, he never identified the weight discrepancy as part of his dissatisfaction. Thus, the Delaware Supreme

Court did not unreasonably apply *Strickland* in rejecting Odom's ineffective assistance of counsel claim.

In addition to the reasons given by the Delaware Supreme Court, I also find that Odom's ineffective assistance claim is without merit for one basic reason: the actual weight of cocaine crack he delivered was not an element of the offense to which he pled guilty.<sup>3</sup> See 16 Del. C. Ann. § 4751(a). Once Odom pled guilty to delivering the crack cocaine, the amount of cocaine he actually delivered essentially became a non-issue. In other words, even if Odom delivered .02 grams, as opposed to .20 grams or .18 grams, he was subject to the same penalties under 16 Del. C. Ann. § 4751(a). It was Odom's prior criminal history, rather the weight of crack cocaine, that resulted in the imposition of the fifteen year mandatory minimum sentence, as well as the potential life sentence. See D.I. 11, Sentencing Transcript, ID. NO. 9909005059, at 46-7, 49-50. Thus, his counsel's alleged "failure" to investigate the weight discrepancy was not unreasonable, and Odom cannot establish that he was prejudiced by his counsel's failure to pursue this meritless issue. See *United States v. Brown*, 2003 WL 277256, at \*3 (D. Del. Feb. 5, 2003)(recognizing that "it is not ineffective assistance of counsel to fail to raise a meritless claim").

In conclusion, the Delaware Supreme Court's denial of Odom's ineffective assistance of counsel claim was neither contrary to, nor an unreasonable application of, clearly established federal law. This claim therefore does not warrant federal habeas relief under § 2254(d)(1).

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<sup>3</sup>Section 4751(a) states:

[A]ny person who manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified in Schedule I or II which is a narcotic drug is guilty of a class C felony and shall be fined not less than \$ 5,000 nor more than \$ 50,000.

## V. CERTIFICATE OF APPEALABILITY

When a district court issues a final order denying a § 2254 petition, the court must also decide whether to issue a certificate of appealability. *See* Third Circuit Local Appellate Rule 22.2. A certificate of appealability is appropriate when a petitioner makes a “substantial showing of the denial of a constitutional right” by demonstrating “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Additionally, when a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the court is not required to issue a certificate of appealability unless the petitioner demonstrates that jurists of reason would find the following debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. *Id.* “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” *Id.*

I conclude that Odom’s abuse of discretion claim is procedurally barred, and his ineffective assistance of counsel claim does not warrant federal habeas relief under § 2254(d)(1). Reasonable jurists would not find these conclusions unreasonable. Consequently, Odom has failed to make a substantial showing of the denial of a constitutional right, and I decline to issue a certificate of appealability.

## **VI. CONCLUSION**

For the foregoing reasons, I conclude that Odoms's § 2254 petition does not warrant federal habeas relief. I also find no basis for the issuance of a certificate of appealability. An appropriate order will follow.

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

ALEXANDER ODOM,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ. A. No. 02-1279-KAJ
	)	
THOMAS CARROLL, Warden,	)	
	)	
Respondent.	)	

**ORDER**

For the reasons set forth in the Memorandum Opinion issued in this action today, IT IS  
HEREBY ORDERED that:

1. Alexander Odom’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED. (D.I. 2.)
2. A certificate of appealability will not be issued. *See* 28 U.S.C. § 2253(c)(2).

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

February 23, 2005  
Wilmington, Delaware