

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

GEORGE K. TRAMMELL, III,)	
)	
Petitioner,)	
)	
v.)	Civ. A. No. 02-1478-KAJ
)	
UNITED STATES OF AMERICA,)	
RICK KEARNEY, Warden, et. al.,)	
)	
Respondents.)	

MEMORANDUM OPINION

George K. Trammell, III. *Pro se* Petitioner.

Lauren C. Meyers, Chief of Appeals Division, Delaware Department of Justice, Wilmington, Delaware. Attorney for Respondent Rick Kearney, Warden.

November 29, 2004
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

Petitioner George K. Trammell, III filed the instant application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 while he was incarcerated at the Sussex Correctional Institution in Georgetown, Delaware.¹ (D.I. 2.) For the reasons that follow, I will dismiss his habeas application.

II. FACTUAL AND PROCEDURAL BACKGROUND

On May 14, 2001, after failing to appear for his preliminary hearing, a state grand jury indicted Trammell on charges of second degree forgery, (11 Del. C. Ann. § 861 (Repl. 2001)), criminal impersonation, (11 Del. C. Ann. § 907 (Repl. 2001)), driving with a suspended driver's license, (21 Del. C. Ann. § 2701 (Repl. 1995)), and failure to have two head light lamps on a motor vehicle, (21 Del. C. Ann. § 4333 (Repl. 1995)). Trammell was subsequently apprehended on a bench warrant and arraigned on June 4, 2001. He pled guilty in the Delaware Superior Court on August 8, 2001 to second degree forgery and driving during a

¹Although Trammell names numerous individuals and government entities as Respondents, the proper Respondent for the instant habeas application is Rick Kearney, Warden of the Sussex Correctional Institution where Trammell was in custody at the time of filing. See Rule 2 and Proposed Amendment of Rule 2, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

period of suspension. On the same day, the court sentenced Trammell to a total of 2 years and 30 days imprisonment, suspended for 2 ½ years probation. He did not appeal his conviction and sentence.²

In the meantime, on July 9, 2001, Trammell had filed in this Court a notice of removal seeking to transfer his criminal prosecution from the Delaware Superior Court to federal court. The Court dismissed the removal action on August 16, 2001. *State of Delaware v. Trammell*, Civ. Act. No. 01-473-RRM (D. Del. Aug. 16, 2001). The Court of Appeals for the Third Circuit affirmed this decision. *State of Delaware v. Trammell*, No. 01-3574 (3d Cir. Oct. 22, 2002).

On August 6, 2002, Trammell filed papers in the United States District Court for the District of Vermont, alleging that the Delaware Superior Court did not have jurisdiction to sentence him because of his removal action in this Court. He sought damages and immediate release from prison. (D.I. 2.) The Vermont District Court construed the papers as an application for

²Further, in January 2002, the Delaware Superior Court found that Trammell had violated the terms of his probation. The state court revoked his probation and sentenced him to a term of imprisonment, to be suspended upon his completion of a substance abuse treatment program. The Delaware Supreme Court affirmed the revocation of Trammell's probation. *Trammell v. State*, No. 45,2002 (Del. Sept. 19, 2002).

habeas relief pursuant to 28 U.S.C. § 2254, and transferred the case here. (D.I. 3.)

After receiving the transferred habeas papers, the Court sent Trammell a form notifying him that his § 2254 application was subject to certain restrictions under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). The AEDPA election form also asked how he wanted to proceed with his application, and notified him that if he did not return the form within the required time-period, the Court would proceed with his application as filed. (D.I. 7.) The record indicates that he did not return the AEDPA election form.

The State filed an Answer, waiving Trammell's failure to exhaust remedies under 28 U.S.C. § 2254(b)(3). The State asserts that the Delaware Superior Court did have jurisdiction to sentence Trammell, thus, his application should be dismissed because Trammell's claim is meritless. (D.I. 12.)

Trammell's habeas petition is ready for review.

III. 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). AEDPA increases the deference federal

courts must give state court decisions, primarily by imposing procedural requirements and standards for analyzing the merits of a habeas petition. See *id.* 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).

Under 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). Generally, a court cannot review a habeas petition 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). However, a state can expressly waive the exhaustion requirement, thereby permitting a court to reach the merits of an argument. 28 U.S.C. § 2254(b)(2)(3).

IV. DISCUSSION

The premise of Trammell’s claim is that the Delaware Superior Court did not have jurisdiction to sentence him on August 8, 2001 because, at the time of sentencing, his petition

for removal from state to federal court under 28 U.S.C. §§ 1443 & 1446 was still pending in this Court.

The State correctly asserts that this claim is meritless. Pursuant to 28 U.S.C. § 1446(c)(1), Trammell had to file his petition to remove his criminal prosecution from state court to this Court within 30 days of his arraignment in state court.³ Trammell was arraigned on June 4, 2001, but because the 30 day period ended on July 4, a legal holiday, the deadline to timely file his removal action was extended to July 5, 2001. *State of Delaware v. Trammell*, Civ. Act. No. 01-473-RRM (D. Del. Aug. 16, 2001). Trammell, however, did not file his removal petition until July 9, 2001, and he filed it without requesting or obtaining leave to file it late. The Court therefore dismissed that removal petition as untimely, and the Third Circuit affirmed this decision. *State of Delaware v. Trammell*, Civ. Act. No. 01-473-RRM (D. Del. Aug. 16, 2001), *aff'd*, No. 01-3574 (3d Cir. Oct. 22, 2002).

Trammell's failure to timely file his removal petition or obtain leave to file it late means that the removal petition was not

³Section 1446(c)(1) states:

A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

properly filed in this Court. *Seaton v. Jabe*, 992 F.2d 79, 81 (6th Cir. 1993). Consequently, the Court never assumed jurisdiction over Trammell's case, and the Delaware Superior Court was never divested of jurisdiction to convict and sentence Trammell. *Id.* Thus, because the Superior Court had jurisdiction to sentence Trammell, the Court will dismiss his habeas application as meritless.

V. CERTIFICATE OF APPEALABILITY

When a district court issues a final order denying a § 2254 application, the court must also decide whether to issue a certificate of appealability. See Third Circuit Local Appellate Rule 22.2. A court may only issue a certificate of appealability 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).

I conclude that Trammell's application for habeas relief is without merit. Reasonable jurists would not find this conclusion to be unreasonable. Consequently, I decline to issue a certificate of appealability.

VI. CONCLUSION

For the reasons stated, Trammell's application for habeas relief is dismissed. An appropriate Order shall issue.

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ORDER

At Wilmington, this 29th day of November, 2004, consistent with the Memorandum Opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner George K. Trammell, III's application for the writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED, and the relief requested therein is DENIED. (D.I. 2.)

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).

Kent A. Jordan
UNITED STATES DISTRICT JUDGE