IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

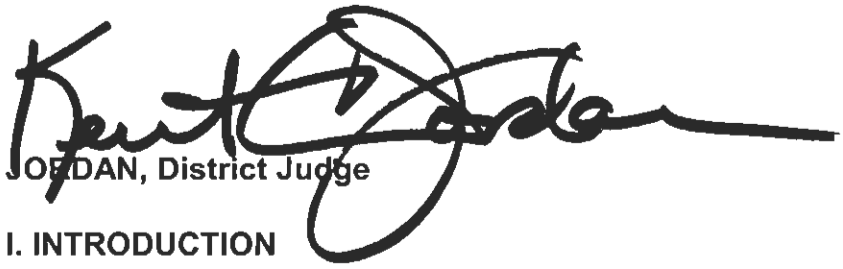
LLOYD L. ANDERSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ. A. No. 02-1683-KAJ
	)	
RAPHAEL WILLIAMS, Warden,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION

Lloyd L. Anderson. *Pro se* Petitioner.

Elizabeth McFarlan, Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware. Attorney for Respondent.

March 31, 2005
Wilmington, Delaware



JORDAN, District Judge

I. INTRODUCTION

Petitioner Lloyd L. Anderson was incarcerated at the Howard R. Young Correctional Center in Wilmington, Delaware when he filed the pending petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 2; D.I. 6.) For the reasons that follow, the Court will dismiss his petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

On December 4, 1996, a Federal Express facility informed the Delaware State Police that it had intercepted a package containing approximately ten pounds of marijuana. Upon receiving this information, the police set up a surveillance operation at the Federal Express facility and eventually arrested Shantel Wright, after she claimed the package. During police questioning, Wright stated that a friend, Juanita Masten, had asked her to pick up the package. However, the ultimate recipient of the package was to be Lloyd Anderson. At the request of the police, Wright delivered the package to Anderson's place of business under police surveillance. When Anderson accepted the package, the police arrested him on charges of second degree conspiracy (11 Del. C. Ann. § 512), maintaining a vehicle for keeping controlled substances (16 Del. C. Ann. § 4755(a)(5)), trafficking in marijuana (16 Del. C. Ann. § 4753A(a)(1)(a)), and possession with intent to deliver marijuana (16 Del. C. Ann. § 4752).

Following a jury trial in February 1998, Anderson was acquitted of second degree conspiracy and maintaining a vehicle for keeping controlled substances. A mistrial was

declared on the trafficking in marijuana and possession with intent to deliver marijuana charges. On retrial, a Superior Court jury convicted Anderson of the trafficking and possession charges. He was sentenced to a total of twelve years at Level V imprisonment, suspended after serving five years for seven years at Level IV work release and probation. *See In re Anderson*, 818 A.2d 150 (table), 2003 WL 728555 (Del. Feb. 28, 2003) (Delaware Supreme Court Order dismissing Anderson's petition for a Writ of Mandamus to correct his sentence).

Anderson appealed, and the Delaware Supreme Court affirmed the Superior Court's decision. *Anderson v. State*, 748 A.2d 406 (table), 2000 WL 275659 (Del. 2000).

In September 2000, Anderson filed a *pro se* motion in the Delaware Superior Court for post-conviction relief pursuant to Delaware Superior Court Criminal Rule 61 ("Rule 61 motion"). He asserted that his trial and appellate attorneys provided ineffective assistance of counsel, and that the trial court had abused its discretion in admitting Wright's recorded police statement during his second trial. The Superior Court denied Anderson's Rule 61 motion, finding his ineffective assistance of counsel claims meritless and his abuse of discretion claim procedurally barred as formerly adjudicated under Delaware Superior Court Criminal Rule 61(i)(4). *Anderson v. State*, 2002 WL 187509 (Del. Super. Ct. Jan. 31, 2002).

Anderson appealed to the Delaware Supreme Court, raising the same ineffective assistance of counsel claims and a new claim that the Superior Court abused its discretion in denying him a transcript of his first trial at the state's expense. *Anderson v.*

State, 805 A.2d 902 (table), 2002 WL 2017067 (Del. Aug. 30, 2002). The Delaware Supreme Court affirmed the Superior Court's decision, and also denied Anderson's new transcript claim as meritless. *Id.* at **2.

On November 17, 2002, Anderson filed in this Court a petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254, asserting two claims of ineffective assistance of counsel and a claim challenging the state courts' denial of transcripts from his first trial. (D.I. 2.) He subsequently filed an amended petition on December 19, 2002 asserting the same claims, but also included attachments of his state court motions. (D.I. 6.) The State's answer to the amended petition contends that Anderson's claims do not warrant federal habeas relief under § 2254(d)(1), and it asks the Court to dismiss Anderson's petition. (D.I. 9.)

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

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). 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." 28 U.S.C. § 2254(c). Generally, a petitioner must demonstrate that the habeas claim was "fairly presented" 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).

C. Standard of Review Under AEDPA

Once a federal court determines that a claim is exhausted and the state court adjudicated the federal habeas claim on the merits, then the 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 claim is considered to have been "adjudicated on the merits" for the purposes of 28 U.S.C. § 2254(d)(1) 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), *cert. granted*, 125 S.Ct. 27 (U.S. Sept. 28, 2004)(No. 04-5462).

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. 28 U.S.C. § 2254(e)(1); *Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003) (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

Anderson asserts three claims in his habeas petition: (1) on retrial, defense counsel provided ineffective assistance by "opening the door" to prejudicial testimony; (2) on retrial, counsel was ineffective for failing to file a motion to suppress evidence based on the doctrine of collateral estoppel; and (3) the Delaware courts abused their discretion by denying his request to provide transcripts of his first trial at the state's expense.[1] (D.I. 6.)

The State correctly acknowledges that Anderson exhausted state remedies by presenting these claims to the Delaware Supreme Court on post-conviction appeal. *See Anderson*, 2002 WL 2017067. The Delaware Supreme Court rejected Anderson's claims on the merits. *Id.* Accordingly, I must apply the deferential standard of review contained in § 2254(d)(1) and determine whether the Delaware Supreme Court's decision was either contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the United States Supreme Court. *See* 28

---

[1]It appears that Anderson is no longer physically incarcerated in a Delaware state prison. However, he satisfies the custody requirement of § 2254(a) because he is serving the work release/probation portion of his sentence. *See Anderson*, 2003 WL 728555; *Jones v. Cunningham*, 371 U.S. 236, 243 (1963); *Claudio v. Superintendent*, 2003 WL 22208734 (E.D. Pa. Mar. 10, 2003).

U.S.C. § 2254(d)(1); *Williams,* 529 U.S. 362; *Werts v. Vaughn*, 228 F.3d 178 (3d Cir. 2000).

A. Ineffective Assistance of Counsel Claims

The "clearly established Federal law" which governs 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 (2003). To prevail on a claim of ineffective assistance of counsel, 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. *Strickland*, 466 U.S. at 687-88, 692-94; *Marshall v. Hendricks*, 307 F.3d 36, 85 (3d Cir. 2002). In other words, there must be a reasonable probability that, but for counsel's faulty performance, the outcome of the proceedings would have been different. *Id.* When evaluating counsel's performance, however, a court should not "focus[] solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable." *Lockhart v. Fretwell*, 506 U.S. 364, 369 (1993).

1. Trial counsel's cross-examination does not warrant federal habeas relief under § 2254(d)(1)

After arresting Shontel Wright, the police recorded her statement regarding the events of December 4, 1996, the date of the charged crimes. Part of Wright's statement discussed the continuing drug smuggling activities of Anderson and his girlfriend, Juanita Masten. During Anderson's re-trial, defense counsel cross-examined both the detective who recorded the statement and Shantel Wright herself. These cross-examinations elicited testimony that: (1) Wright had seen large quantities of

marijuana in Masten's apartment; (2) Wright had gone to the airport with Masten to transport drug couriers; (3) Wright had witnessed Masten wire large sums of money to California; (4) Masten had received other shipments of marijuana; and (5) Masten was a constant user of marijuana. (D.I. 16, State's Ans. Br. in *Anderson v. State*, No.364,1999, at 4.) Defense counsel did not ask any questions regarding Anderson's involvement in these activities.

Following Wright's cross-examination, the prosecutor moved to admit her entire recorded statement into evidence pursuant to 11 Del. C. Ann. § 3507. After *voir dire* examination of Wright, defense counsel objected that any testimony regarding Anderson's involvement in the drug smuggling activities was inadmissible as other crimes evidence under Delaware Rule of Evidence 404(b). The prosecutor suggested that, rather than admit the entire statement into evidence, he should be permitted to question Wright on re-direct examination about her knowledge of Anderson's involvement in the prior drug dealings, as defense counsel had done regarding Masten's involvement. *Id.* at 4-5.

The trial judge ruled that defense counsel had opened the door to such questioning in cross-examining the witnesses and that the evidence was not excludable under Delaware Rule of Evidence 404.

In his direct appeal, Anderson argued that the trial court erred in admitting Wright's entire statement because the evidence of other drug shipment transactions was not relevant to the charged offenses, and the probative value of such evidence was outweighed by its prejudicial effect. The Delaware Supreme Court rejected this argument, holding that the Superior Court properly found the evidence admissible

under Delaware Rule of Evidence 404(b) and *Getz v. State*, 538 A.2d 726 (Del. 1998). *Anderson*, 2002 WL 275659, at **1.

Thereafter, Anderson presented his Rule 61 motion to the Delaware Superior Court, arguing that defense counsel improperly cross-examined Wright because his questioning "opened the door" for the admission of her otherwise inadmissible statement. The Superior Court denied the claim as meritless, specifically stating that "the State could have introduced the [statement] notwithstanding Trial Counsel's cross-examination of Ms. Wright." *Anderson*, 2002 WL 187509, at *3. The Delaware Supreme Court affirmed, stating that Anderson could not demonstrate ineffective assistance because the evidence was properly admitted. *Anderson*, 2002 WL 2017067, at **1.

Anderson's first habeas claim mirrors the claim he raised in his state Rule 61 motion: namely, defense counsel provided ineffective assistance because his cross-examination of Wright regarding certain aspects of her statement opened the door to the admission of her entire statement. Anderson asserts that his counsel's action was unreasonable and prejudiced his defense. My first step under § 2254(d)(1) is to determine if the Delaware courts' denial of this claim was "contrary to" *Strickland*.

A state court's decision is "contrary to . . . clearly established Federal law" if "the state court applies a rule that contradicts the governing law set forth in [the Supreme Court] cases," or "if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite to [it]." *Williams*, 529 U.S. at 405. When a "run-of-the-mill state-court decision applie[s] the

correct legal rule from [Supreme Court] cases to the facts of a prisoner's case, "the decision is not "contrary to" that precedent. *See id.* at 406.

Here, the Delaware Superior Court denied Anderson's claim after expressly analyzing its merits pursuant to the two-pronged *Strickland* test. *See Anderson*, 2002 WL 187509, at *3. The Delaware Supreme Court affirmed that decision, finding that Anderson could not satisfy either *Strickland* prong because the statement was properly admitted during Anderson's re-trial. *Anderson*, 2002 WL 2017067, at **1. The state courts correctly identified *Strickland* as the controlling legal authority and applied that framework in denying Anderson's claim. *See Williams*, 529 U.S. at 406. Thus, the state courts' denial of this claim was not "contrary to" *Strickland*.

That does not end the inquiry, however, because I must also determine whether the state courts' rejection of Anderson's ineffectiveness claim constitutes an "unreasonable application of" *Strickland*. *See* 28 U.S.C. § 2254(d)(1). "The unreasonable application test is an objective one – a federal court may not grant habeas relief merely because it concludes that the state court applied federal law erroneously or incorrectly." *Jacobs v. Horn*, 395 F.3d 92, 100 (3d Cir. 2005)(citing *Wiggins*, 539 U.S. at , 520-21). Under this analysis, I must objectively evaluate the state court decision on the merits and determine whether the state court reasonably applied the *Strickland* standard to the facts of Anderson's case. *See Williams*, 529 U.S. at 412-13; *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 891 (3d Cir. 1999). I proceed directly to *Strickland*'s prejudice inquiry because "it is easier to dispose of

[Anderson's] ineffectiveness claim on the ground of lack of sufficient prejudice" than on the basis of deficient performance. *Strickland*, 466 U.S. at 697.

Here, after analyzing the same claim, the Delaware courts concluded that Wright's entire statement was properly admitted under DRE 404(b) and *Getz*. The state courts also concluded that Wright's statement would have been admissible even if defense counsel had not "opened the door." I must defer to the Delaware courts' conclusions regarding this Delaware evidentiary issue. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991)("it is not the province of a federal habeas court to reexamine state court determinations on state-law questions"); *Preister v. Vaughn*, 382 F.3d 394, 402 (3d Cir. 2004). Consequently, because Wright's statement would have been admissible even if defense counsel had not cross-examined Wright, Anderson cannot demonstrate the requisite prejudice under *Strickland*. I therefore conclude that the Delaware courts did not unreasonably apply *Strickland* in denying this ineffective assistance of counsel claim, and federal habeas relief is not warranted under § 2254(d)(1).

2. Defense counsel was not ineffective in failing to file a motion to suppress based on collateral estoppel

Anderson's second ineffective assistance of counsel claim asserts that, pursuant to the doctrine of collateral estoppel, his acquittal on the charges of conspiracy in the second degree and maintaining a vehicle for keeping controlled substances barred further use of any evidence related to such charges in his second trial. Anderson contends his defense counsel provided ineffective assistance by failing to file a suppression motion raising this argument.

Both the Superior Court and the Delaware Supreme Court found that this ineffective assistance of counsel claim was really Anderson's attempt to argue collateral estoppel as a substantive claim, and that he had procedurally defaulted the claim by failing to raise it during his second trial or in his appeal. However, recognizing that counsel's ineffective assistance, if there were such, could constitute cause to excuse Anderson's procedural default, the Delaware Supreme Court also evaluated the merits of Anderson's ineffective assistance claim. The state supreme court concluded that the underlying collateral estoppel argument was meritless,[2] thus, Anderson's ineffective assistance of counsel claim was also without merit because he could not demonstrate the requisite prejudice under *Strickland*. *Anderson*, 2002 WL 2017067, at **1.

Here, I must also consider the merits of the underlying collateral estoppel argument contained in Anderson's second ineffective assistance of counsel claim. The doctrine of collateral estoppel prevents "an issue of ultimate fact [that] has once been determined by a valid and final judgment [from being] relitigated between the same parties in any future lawsuit." *Ashe v. Swenson*, 397 U.S. 436, 443 (1970). An "'acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt.'" *Id.* (citing *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984)). Thus, although an acquittal is a final judgment, it is not a finding of fact. *U.S. v. Watts*, 519 U.S. 148, 155 (1997)(citation omitted).

---

[2]The Delaware Supreme Court cited *State v. Sheeran*, 441 A.2d 235 (1985) in its discussion of the collateral estoppel issue, which follows the *Ashe v. Swenson,* 397 U.S. 436, 443 (1970) approach to determining whether collateral estoppel applies in an acquittal/re-trial situation. *Sheeran*, 441 A.2d at 242-43.

When, as here, the "previous judgment of acquittal was based on a general verdict, courts must 'examine the record of [the] prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict on an issue other than that which the defendant seeks to foreclose from consideration.'" *Dowling v. U.S.*, 493 U.S. 342, 350(1990) (quoting *Ashe*, 397 U.S. at 444); *State v. Sheeran*, 441 A.2d 235, 242 (Del. Super. Ct. 1981), *aff'd*, 526 A.2d 886 (Del. 1987). If "the prior acquittal did not determine an ultimate issue in the [second trial]," then the doctrine of collateral estoppel does not "exclude . . . relevant and probative evidence [from the second trial] that is otherwise admissible under the Rules of Evidence simply because it relates to the alleged criminal conduct for which a defendant has been acquitted." *Dowling*, 493 U.S. at 348. The defendant bears the burden of proving that the issue he wishes to foreclose was decided in his favor during the previous trial. *United States v. Merlino*, 310 F.3d 137, 142 (3d Cir. 2002).

In the instant case, Anderson appears to believe that his counsel should have argued that the State was collaterally estopped from introducing all the evidence admitted during his first trial. This argument is without merit because Anderson's acquittals on the charges of conspiracy in the second degree and maintaining a vehicle did not necessarily determine any facts at issue in his second trial regarding the trafficking and possession charges. In essence, Anderson's "contention is overbroad in that it overlooks an essential element for collateral estoppel to apply, namely, that in order for the jury to acquit in the first prosecution, the jury must have found that a matter which is essential in [the second] prosecution had not been established beyond

a reasonable doubt in the prior prosecution." *State v. Sheeran*, 441 A.2d 235, 243 (Del. 1981).

The matters to be litigated in Anderson's second trial were that Anderson knowingly possessed the marijuana (trafficking charge) and that he intended to deliver the marijuana he had in his possession (possession with intent to deliver charge). Neither knowing possession nor intent to deliver were issues actually decided in his first trial. For example, by acquitting Anderson of conspiracy in the second degree, the jury only "necessarily determined" that Anderson did not enter into an agreement that he or Wright would engage in trafficking marijuana and/or possession of marijuana with intent to deliver.[3] In other words, an acquittal on the conspiracy second charge merely means that the State failed to prove the existence of an agreement between Anderson and Masten beyond a reasonable doubt. The acquittal did not "necessarily determine" that Anderson did not knowingly possess the marijuana or that he did not intend to deliver the marijuana.

With respect to the maintaining a vehicle for keeping controlled substances charge, the evidence introduced during Anderson's first trial was that Anderson had

---

[3]Pursuant to 11 Del. C. Ann. § 512, in order to prove conspiracy in the second degree, the State must prove that the defendant:

> (1) Agree[d] with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or
>
> (2) Agree[d] to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony; and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

placed the FedEx box of marijuana in a customer's car. To obtain a conviction, the State needed to prove that Anderson "knowingly [kept] or maintain[ed] [the]... vehicle ... which is resorted to by persons using controlled substances ... for the purpose of ... keeping or delivering [the controlled substances]." 16 Del. C. Ann. § 4755(a)(5).

The ultimate issue of fact to be determined on this charge was whether Anderson knowingly kept or maintained the vehicle to deliver the marijuana. Therefore, an acquittal in the first trial on the maintaining a vehicle charge meant that the State failed to prove beyond a reasonable doubt that Anderson knowingly kept or maintained the car to deliver the marijuana, not that Anderson did not possess the marijuana with intent to deliver or traffic it.

In contrast, the essential matter to be determined in Anderson's second trial was his possession of the marijuana with intent to traffic or deliver it. The jury in the first trial could have grounded its decision to acquit on the ownership of the car, rather than Anderson's possession of the marijuana. Thus, the evidence relating to the police retrieval of the marijuana was admissible at Anderson's re-trial.

In short, even if Anderson's trial counsel had raised the issue of collateral estoppel, the evidence from his first trial could still have been properly admitted in his second trial. Anderson, therefore, was not prejudiced by his counsel's failure to file a suppression motion on this ground. Accordingly, I conclude that the Delaware Supreme Court's denial of this claim was not an unreasonable application of *Strickland*.

B. Transcripts

Anderson's final habeas claim is that the state courts violated his due process rights by denying state-funded transcripts of his first trial. Again, I must determine

whether the Delaware Supreme Court's denial of this claim was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

My first step in this inquiry is to determine the "clearly established federal law" governing the free transcript issue. *See Matteo,* 171 F.3d at 880; *Williams*, 529 U.S. at 405 (2000). While it is well-settled that "the State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal," *Britt v. North Carolina*, 404 U.S. 226, 227 (1971), it is unclear whether an indigent state defendant has a constitutional right to free transcripts in order to prepare a collateral challenge to his conviction. *See Wade v. Wilson,* 396 U.S. 282, 286 (1970)(declining to decide whether the "Constitution requires that a State furnish an indigent state prisoner free of cost a trial transcript to aid him to prepare a petition for collateral relief"); *United States v. MacCollum*, 426 U.S. 317 (1976)(§ 2255 movant is not entitled to free transcript as a matter of right); *Ortiz v. Snyder*, 2002 WL 511517, at *7 (D. Del. Apr. 2, 2002).

However, if an indigent state defendant does have such a right, then, at a minimum, the defendant must demonstrate a particularized need for the transcript. *Cf. MacCollum*, 426 U.S. at 326 (finding that, in a § 2255 proceeding, an indigent petitioner will be provided with a publicly funded transcript upon demonstrating that his 2255 claim is not frivolous and the transcript is needed to decide the issue presented). Courts consider two factors in determining whether a transcript is needed: "(1) the value of the transcript to the defendant in connection with the appeal or trial for which it is sought,

and (2) the availability of alternative devices that would fulfill the same functions as a transcript." *Britt*, 404 U.S. at 227. Moreover, courts may also consider whether the defendant waived a prior opportunity to obtain a free transcript. *See Bounds v. Smith,* 430 U.S. 817, 823 n.8 (1977).

In the instant case, Anderson had an opportunity on direct appeal to obtain free transcripts of his first and second trials, but he chose to forego that right. *See MacCollum*, 426 U.S. at 325 (1976); *Griffin v. Illinois*, 351 U.S. 12 (1956). Instead, Anderson waited until his appeal was over and he was preparing his Rule 61 motion to request the transcripts of his first trial. He wanted the first trial transcripts so that he could demonstrate the deficiencies in his trial counsel's performance by "show[ing] a before and after performance [of trial counsel] that directly resulted in a conviction of Petitioner." (D.I. 16, Pet. Mand. in *Anderson v. Carpenter*, IN96120523, at 4.) The Delaware Superior Court denied Anderson's motion for his first trial transcripts, stating:

> The transcript[s] requested are for the first trial of this matter which occurred on February 3 and 4, 1998 in which the jury was unable to reach a verdict. The court does not believe those transcripts are relevant to a determination as to whether the assistance that counsel provided to him in the second trial which occurred on September 1 and 2 1998 was ineffective.

(D.I. 8, at A7, No. 75.) He appealed this denial, but the Delaware Supreme Court dismissed the appeal as interlocutory.

Anderson then filed a Rule 61 motion, asserting that trial counsel provided ineffective assistance during his second trial. The Superior Court denied the Rule 61 motion, and Anderson appealed. While his post-conviction appeal was pending, Anderson filed another request in the Superior Court for the transcripts of his first trial, which the Superior Court denied. (D.I. 16, App.'s Op. Br. dated June 13, 2002 in

Anderson v. State, No.97,2002, at Ex. D.) After this second denial, the Delaware Supreme Court set the dates for the filing of appellate briefs, and informed Anderson that he could raise the Superior Court's denial of his transcripts as an issue in his appellate brief. *Id.* at Ex. E.

Anderson followed this advice and, in his post-conviction appellate brief, argued that the Superior Court abused its discretion and violated his rights to due process and equal protection in denying his request for the transcripts. (D.I. 16, App.'s Op. Br. dated June 13, 2002 in *Anderson v. State*, No.97,2002, at 18.) Anderson contended that the transcripts of the first trial were necessary to determine the prejudice prong of *Strickland* with respect to his claim that trial counsel's failure to file a motion to suppress on the ground of collateral estoppel constituted ineffective assistance. *Id.*

The Delaware Supreme Court denied this claim as meritless, stating that it was within the Superior Court's discretion to deny a state-funded transcript "absent a showing that there is some legal or factual basis for relief and that there is a particularized need for a transcript." *Anderson*, 2002 WL 2017067, at **2 (citing *MacCollum*, 426 U.S. at 330). The test articulated by the Delaware Supreme Court paralleled the appropriate analysis under federal law. The court's decision was thus not contrary to federal law.

I also find that the Delaware Supreme Court's decision regarding Anderson's transcript motion was not an unreasonable application of federal law. Despite not having a transcript of his first trial, Anderson was able to present his ineffective assistance of counsel claim to the Delaware state courts. Further, as previously

explained, the underlying collateral estoppel argument is meritless, meaning that Anderson could not satisfy the prejudice prong of *Strickland*. The transcripts would not have helped Anderson to prove an already baseless claim.

Finally, Anderson wanted the transcripts so that he could compare counsel's performance in the first trial with his performance in the second trial. A fishing expedition to find errors on which to base a collateral attack does not demonstrate the type of need entitling an indigent prisoner to free transcripts. *See Negron v. Adams*, 229 F.3d 1164 (table), 2000 WL 1152554, at **3 (10th Cir. 2000); *U.S. v. Woods*, 2004 WL 2786143, *1 (E.D. Pa. Oct. 7, 2004)(collecting cases). Thus, I hold that the Delaware Supreme Court's denial of this claim does not provide a basis for federal habeas relief under § 2254(d)(1).

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).

I conclude that Anderson's habeas claims do not warrant federal habeas relief. Reasonable jurists would not find this conclusion to be unreasonable. Consequently, I will not issue a certificate of appealability.

VI. CONCLUSION

For the reasons stated, Anderson's petition for habeas relief pursuant to 28 U.S.C. § 2254 is denied. An appropriate order will follow.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LLOYD L. ANDERSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civ. A. No. 02-1683-KAJ
	)	
RAPHAEL WILLIAMS, Warden,	)	
	)	
Respondent.	)	

ORDER

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

1. Lloyd Anderson's petition for the writ of habeas corpus, filed pursuant to 28 U.S.C § 2254, is DISMISSED, and the relief requested therein is DENIED. (D.I. 2; D.I. 6.)

2. A certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c)(2).

Dated: March 31, 2005

UNITED STATES DISTRICT JUDGE