

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANA WILLIAMS, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 02-460-JJF
 :
 TOM CARROLL, :
 :
 Respondent. :

Dana Williams, Pro Se Petitioner.

Elizabeth R. McFarlan, Esquire, Deputy Attorney General of the
DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Repondent.

MEMORANDUM OPINION

February 12, 2003
Wilmington, Delaware

FARNAN, District Judge.

Pending before the Court is Dana Williams' Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (D.I. 2). For the reasons set forth below, the Petition will be denied.

I. BACKGROUND

In 1999, Williams was convicted by a Delaware Superior Court jury of stalking and non-compliance with conditions of bond. Subsequently, Williams' convictions were affirmed on direct appeal. Williams v. State, 756 A.2d 349 (Del. 2000). In 2001, Williams filed a motion for state post-conviction relief in the Delaware Superior Court pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure (the "Rule 61 Appeal"). The Superior Court denied the motion and Williams appealed. On appeal, Williams alleged ineffective assistance of trial counsel and abuse of discretion by the Superior Court in failing to conduct an evidentiary hearing on his post-conviction motion. The Delaware Supreme Court rejected Williams' claims and affirmed the judgment of the Superior Court. Williams v. State, No. 562, 2001 (Del. Apr. 17, 2002). In 2002, Williams filed the instant Petition for federal habeas relief.

II. DISCUSSION

By his Petition, Williams raises two grounds for relief: (1) ineffective assistance of trial counsel for failure (a) to

interview witnesses, (b) to investigate his case, and (c) to adequately communicate with him; and (2) the state court's abuse of discretion in denying his request for an evidentiary hearing regarding his ineffective assistance of counsel claims.

A. Williams' Ineffective Assistance Of Counsel Claims

Williams alleges his trial counsel was ineffective because he failed to interview witnesses, investigate his case, and adequately communicate with Williams.

A state petitioner seeking federal habeas relief must exhaust all state court remedies. 28 U.S.C. § 2254(b) and (c). This exhaustion requirement, which is grounded on principles of comity, ensures that state courts have an initial opportunity to determine and correct any violations of a prisoner's federal constitutional rights. Werts v. Vaughn, 228 F.3d 178, 192 (3d Cir. 2000), cert. denied, 532 U.S. 980 (2001).

To satisfy the exhaustion requirement, "state prisoners must give the 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 v. Boerckel, 526 U.S. 838, 845 (1999). To satisfy the exhaustion requirement a state prisoner must fairly present each of his claims to the state courts, Id. at 844-45, which "requires that the claim brought in federal court be the substantial equivalent of that presented to the state courts." Gibson v. Scheidemantel,

805 F.2d 135, 138 (3d Cir. 1986). A federal claim is not substantially equivalent simply because it relies on the same constitutional provision as claims raised in state court. Id. Rather, "the legal theory and the facts on which a federal claim rests must have been presented to the state courts." Id.

In the instant case, Williams raised an ineffectiveness of counsel claim in his Rule 61 Appeal to the Delaware Supreme Court. In that appeal, Williams alleged that his trial counsel was ineffective because he failed to interview witnesses and investigate his case. See Appellant's Op. Br. in Williams, No. 562, 2001. Thus, the Court concludes that Williams has exhausted his state court remedies as to those ineffectiveness claims. However, Williams, in his Rule 61 Appeal, did not allege that his trial counsel was ineffective for inadequately communicating with him. See id. Because Williams did not present the specific facts underlying his ineffectiveness claim for inadequate communication to the state court, this Court concludes that Williams' ineffectiveness claim for inadequate communication is not substantially equivalent to the ineffectiveness claims presented to the state court. As the holding in Gibson makes clear, Williams' ineffectiveness claim for inadequate communication is not substantially equivalent to his prior ineffectiveness claims simply because it relies on the same constitutional provision as the prior claims raised in state

court. Accordingly, the Court concludes that Williams' ineffectiveness claim for inadequate communication was not fairly presented to the state court. Therefore, the Court further concludes that Williams did not satisfy the exhaustion requirement as to his ineffectiveness claim for inadequate communication.

If a claim has not been fairly presented, and further state court review is procedurally barred, the exhaustion requirement is deemed satisfied because further state court review is unavailable. Lines v. Larkins, 208 F.3d 153, 160 (3d Cir. 2000), cert. denied, 531 U.S. 1082 (2001). Because further state court review of Williams' ineffectiveness claim for inadequate communication is procedurally barred pursuant to Delaware law, see Del. Super. Ct. Crim. R. 61(i)(2), the Court deems the exhaustion requirement satisfied.

Although deemed exhausted, such claims are nonetheless procedurally defaulted. Lines, 208 F.3d at 160. A federal court may not consider the merits of procedurally defaulted claims unless the petitioner demonstrates cause and prejudice. Coleman v. Thompson, 501 U.S. 722, 750 (1991). To show cause for a procedural default, a petitioner must show that "some objective factor external to the defense" precluded compliance with state procedural rules. Murray v. Carrier, 477 U.S. 478, 488 (1986). In the instant Petition, Williams has not alleged a cause for his

procedural default. Williams was aware of the facts underlying his ineffectiveness claim for inadequate communication at the time he filed his Rule 61 Appeal and demonstrated the ability to comply with state procedural rules as to his two other ineffectiveness claims. For the above reasons, the Court concludes that Williams has not shown cause for his default. Because Williams cannot show cause, the Court need not address the issue of prejudice. Smith v. Murray, 477 U.S. 527, 533 (1986). In sum, the Court concludes that Williams' ineffectiveness claim for inadequate communication is procedurally barred; therefore, the Court will deny Williams' request for federal habeas relief as to that claim.

Having satisfied the exhaustion requirement, Williams' ineffectiveness claims regarding his trial counsel's failure to interview witnesses and investigate his case must be evaluated under the following standard of review:

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 with respect to any claim that was adjudicated on the merits in State court proceedings unless the 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....

28 U.S.C. § 2254(d). Under this provision, a federal court may issue a writ of habeas corpus only if it finds that a state court decision was either: (1) contrary to clearly established federal

law, or (2) involved an unreasonable application of clearly established federal law. Williams v. Taylor, 529 U.S. 362, 412 (2000).

The clearly established federal law governing ineffective assistance of counsel claims is set forth in Strickland v. Washington, 466 U.S. 668, reh'g denied, 467 U.S. 1267 (1984). To establish ineffective assistance of counsel under Strickland, a defendant must show that (1) counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's deficient performance caused defendant actual prejudice. Id. at 687-88, 694. In determining whether counsel's representation was objectively reasonable, "the court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. To obtain federal habeas relief in the instant case, Williams must show that the Delaware Supreme Court's denial of his appeal was contrary to Strickland or involved an unreasonable application of the holding of Strickland.

Williams contends his attorney was ineffective because the attorney failed to interview alibi witnesses and failed to adequately investigate the case. The Court, after a thorough review of the state court record, concludes that Williams' attorney was constitutionally effective under the Strickland standard. In reaching this conclusion, the Court, in part,

relies on the fact that Williams has not explained what his attorney did not investigate and how such investigation would have assisted his defense. In fact, Williams' attorney represented to the trial court that he had conducted a significant amount of investigation and had made a strategic decision not to pursue an incomplete alibi defense. See State v. Williams, No. 9511017952, 2001 WL 13335719, at *1-2 (Del. Super. Oct. 25, 2001). Based on this uncontroverted assertion, the Court concludes that counsel's investigation was reasonable. The Court finds that Williams' allegations regarding an alibi witness are vague and unsubstantiated because at no point during the appeal process has he proffered the name of the alibi witness or the substance of the alibi witness' testimony. Additionally, Williams has neither alleged nor established that he informed his attorney of the existence or identity of the alibi witness. This omission, in conjunction with the Court's conclusion that Williams' attorney's investigation (which includes interviewing potential witnesses) was reasonable, leads the Court to conclude that Williams' counsel's performance was reasonable under the circumstances.

Even assuming that Williams' counsel's representation fell below an objective standard of reasonableness, the Court concludes that Williams has not demonstrated that he was prejudiced by his attorney's performance. As the trial judge

noted, "this was not a close case." Williams, 2001 WL 13335719, at *2. The victim knew Williams well and was a highly credible witness against him at trial. Id. In short, the Court concludes that it was not unreasonable for the Delaware Supreme Court to conclude that even if Williams' attorney's performance was deficient, the outcome of the proceedings would have been the same. Therefore, the Court will deny Williams' request for federal habeas relief as to his two exhausted ineffectiveness claims.

B. DENIAL OF EVIDENTIARY HEARING

Williams contends that the state court abused its discretion by denying Williams' request for an evidentiary hearing regarding his ineffective assistance of counsel claims. Allegations of error in state post-conviction relief proceedings, such as those at issue here, cannot serve as the basis for federal habeas relief. See, e.g., Lazano v. Snyder, 1996 WL 484832, at *4 (D. Del. Aug. 12 1996) (citing Bryant v. Maryland, 848 F.2d 492, 493 (4th Cir. 1988)). Accordingly, the Court will deny Williams' Petition as to this claim.

CONCLUSION

For the reasons discussed, Dana Williams' Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (D.I. 2) will be denied.

An appropriate Order will be entered.

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ORDER

At Wilmington, this 12th day of February 2003, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that:

1. Dana Williams' Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (D.I. 2) is **DENIED**.
2. Because the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right under 28 U.S.C. § 2253(c) (2), a certificate of appealability is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE