

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WILLIAM FRANCIS, JR.,                         :  
   :  
                           Petitioner,            :  
   :  
                           v.                       :  
   :  
   :  
                           Civ. Act. No. 03-1137-JJF  
   :  
THOMAS L. CARROLL, Warden, and           :  
M. JANE BRADY, Attorney General,       :  
   :  
   :  
                           Respondents.       :  
   :  
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William Francis, Jr. Pro Se Petitioner.

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

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**MEMORANDUM OPINION**

March 10, 2005  
Wilmington, Delaware

  
Farnan, Judge

**I. INTRODUCTION**

Petitioner William Francis, Jr. is a Delaware inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the Court is Petitioner's Petition For A Writ Of Habeas Corpus pursuant to 28 U.S.C. § 2254. (D.I. 1.) For the reasons that follow, the Court will deny his Petition.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

In March 1991, Wilmington police officers arrested Petitioner following a bank robbery. See Pope v. State, 632 A.2d 73, 75 (Del. 1993). Petitioner pled guilty in this Court to various federal offenses. In January 1992, the Court sentenced Petitioner to 174 months imprisonment for Bank Robbery, in violation of 18 U.S.C. § 2133(a)&(d). United States v. Francis, Cr. No. 91-27-3-JJF (D. Del. 1992).

After his federal conviction, Petitioner was arraigned on weapons and other charges in the Delaware Superior Court. He pled guilty to first degree conspiracy and a weapons offense. In July 1992, Petitioner was returned from federal custody for sentencing in state court. In August 1992, the Superior Court sentenced Petitioner to ten years at Level V, six of which were mandatory, and the remaining four years were to be suspended at decreasing levels of probation. Petitioner was returned to federal prison to complete his Federal sentence. The Delaware

authorities filed a detainer with the federal authorities.

On October 20, 2003, days before completing his Federal sentence, Petitioner filed a § 2241 habeas Petition in the United States District Court for the Middle District of Pennsylvania. (D.I. 1.) He challenged the Delaware detainer, and argued that his Delaware sentence would expire the same time his Federal sentence expired because they had run concurrently.

On November 2, 2003, Petitioner waived extradition and he was transferred to the Howard R. Young Correctional Institution (formerly known as the Multi-Purpose Criminal Justice Facility/"Gander Hill") in Wilmington, Delaware.<sup>1</sup> (D.I. 3.) The Middle District of Pennsylvania transferred his § 2241 Petition to this Court on December 9, 2003. (D.I. 6.)

In December 2003, Petitioner applied for state habeas corpus relief in the Delaware Superior Court, contending that he was being illegally incarcerated in Delaware because his Delaware sentence had expired. The Superior Court summarily denied the petition. Petitioner appealed, and the Delaware Supreme Court affirmed the denial. Francis v. State, No.8,2004 Corrected Order (Del. Sept. 15, 2004).

Respondents' Answer asks the Court to dismiss Petitioner's Petition because he asserts only a state law issue not cognizable

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<sup>1</sup>Petitioner is presently incarcerated at DCC in Smyrna, Delaware.

on federal habeas review. Petitioner filed a Reply addressing the substantive arguments contained in Respondents' Answer and raising a new procedural due process issue. (D.I. 27.)

Petitioner's habeas Petition is ready for review.

### 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 the 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). The 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, the 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). The 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)).

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

If a state court adjudicated an exhausted 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 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).

The 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**

Reading Petitioner's § 2241 Petition<sup>2</sup> together with his Reply to Respondent's Answer, he presents two claims for federal habeas relief: (1) he is illegally incarcerated in Delaware

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<sup>2</sup>Upon receiving Petitioner's transferred § 2241 Petition, the Court notified him of his rights under AEDPA and also informed him that it was construing his petition as if asserted under § 2254. See Coady v. Vaughn, 251 F.3d 480 (3d Cir. 2001). Petitioner, however, disagreed with the Court's re-characterization, and clearly stated that he wished to proceed under 28 U.S.C. § 2241. The Court still maintains that, considering Petitioner's present physical custody in a Delaware state prison, the proper authority for federal habeas review derives from § 2254 rather than § 2241. Nevertheless, Petitioner's election does not prohibit the Court from providing federal habeas review.

because his Delaware sentence expired in October 2003, the same time his Federal sentence expired; and (2) the Delaware Superior Court violated his right to procedural due process by changing the effective date for his sentence from March 14, 1991 to October 29, 2003 without providing him with an opportunity to be heard.<sup>3</sup> (D.I. 1; D.I. 27, at 5.)

**A. Claim One**

Petitioner's first claim hinges on the wording of the Delaware sentence Order dated August 14, 1992 and the Delaware Supreme Court's interpretation of that wording. The language in question states that state custody of defendant is effective as of March 14, 1991 and "if the defendant is presently serving another sentence, that sentence shall be suspended until completion of this sentence." (D.I. 27, Attch. C-5, D. No. 15.) Because he was already serving a Federal sentence, Petitioner contends that the Delaware sentencing language suspended his Federal sentence and required him to serve his Delaware sentence first. Petitioner appears to believe that Delaware ignored the sentencing language by returning him to federal prison. Consequently, Petitioner argues that his Delaware sentence

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<sup>3</sup>Petitioner raised this claim in his Reply to Respondent's Answer. Petitioner could not have asserted the procedural due process claim in his original Petition (initially filed while he was in federal custody) because he had not yet pursued any remedy in the Delaware state courts. This Court is required to liberally construe and read pro se filings, thus, the Court will consider the procedural due process claim.



started on March 14, 1991, that it ran concurrently with his Federal sentence, and that it expired on March 14, 2001 by operation of law.

Petitioner presented the identical claim to the Delaware Superior Court when he requested state habeas corpus relief. The Superior Court denied the request, and Respondents correctly acknowledge that Petitioner exhausted state remedies by appealing this decision to the Delaware Supreme Court.

However, this claim asserts an issue of state law, which is not cognizable on federal habeas review. 28 U.S.C. § 2254(a); Estelle v. McGuire, 502 U.S. 62, 67-8 (1991); Smith v. Phillips, 455 U.S. 209, 211 (1982). When presented with this identical issue, the Delaware Supreme Court held that, pursuant to Delaware statutory law, Petitioner's Delaware sentence neither suspended his Federal sentence until he served his Delaware sentence nor required his Delaware sentence to be served first. See Francis, No. 8, 2004 Corrected Order n.5 (Del. Sept. 15, 2004) (stating that "[t]he statutes cited by [Petitioner] govern only Delaware sentences"). In other words, Petitioner could not begin his Delaware sentence until he finished his previously imposed Federal sentence. See, e.g., Malloy v. State, 852 A.2d 908 (table), 2004 WL 1535803, \*\*1 (Del. 2004). This Court cannot re-examine the Delaware Supreme Court's determination of Delaware law in this federal habeas proceeding. See Estelle, 502 U.S. at

68; Mullaney v. Weber, 421 U.S. 684, 691 (1975).

Moreover, Petitioner cannot argue that requiring him to serve his Delaware sentence consecutive to his Federal sentence violated his constitutional rights. There is no constitutional right to concurrent sentences, nor is there a constitutional right regarding which sentence should be served first. See, e.g., U.S. v. Dovalina, 711 F.2d 737, 739 & n. 1 (5<sup>th</sup> Cir. 1983). The order in which the sentences are to be served is a matter of comity between the state and federal jurisdictions which imposed the sentences. Hernandez v. U.S. Atty. Gen., 689 F.2d 915, 919 (10<sup>th</sup> Cir. 1982).

In the instant case, Petitioner was returned to federal custody after he was sentenced in Delaware. Delaware then lodged a detainer with the federal authorities describing the details of his Delaware sentence and requiring him to be returned to Delaware once he completed his Federal sentence. (D.I. 1, Exh. C.) Clearly, Delaware always intended for Petitioner to serve his Delaware sentence after he finished serving his Federal sentence. This conclusion is supported by the fact that Delaware law actually prohibits criminal sentences from running concurrently, thus, the sentencing court would not have intended Petitioner's Delaware sentence to run concurrently with his Federal sentence. 11 DEL. C. ANN. § 3901(d). Accordingly, the Court will dismiss this claim.

## B. Claim Two

Petitioner's second claim alleges that the Superior Court violated his right to procedural due process by changing the effective date of his Delaware Sentence from March 14, 2001 to October 29, 2003 without affording him an opportunity to be heard. His state habeas corpus appellate brief raised federal due process and double jeopardy claims, and, liberally construing those claims, the Court finds that he presented the instant procedural due process claim to the Delaware Supreme Court.<sup>4</sup> Thus, he has exhausted state remedies.<sup>5</sup>

The Delaware Supreme Court, however, did not adjudicate this claim on the merits. Holloway v. Horn, 355 F.3d 707, 718 (3d Cir. 2004) (a state court opinion which does not even mention a federal constitutional claim does not constitute an adjudication on the merits). As such, § 2254(d)(1)'s deferential standard of review does not apply, and the Court will review this claim on the merits. Id.

Petitioner's original Sentencing Order states that he is to serve ten years at Level V, six of which are mandatory. The

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<sup>4</sup>Petitioner's appellate brief asserts "Appellant's effective date was administratively changed from March 14, 1991 to October 29, 2003, without a Superior Court proceeding at which Appellant was present with counsel." (D.I. 25, Francis v. State, No.8,2004, Appellant's Op. Brief dated Mar. 18, 2004, at viii.)

<sup>5</sup>To the extent this claim asserts an error of Delaware law, it does not present a claim cognizable on federal habeas review. See infra at 9.

Sentencing Order also states March 14, 1991 as the effective date of the Department of Correction's custody over him. Petitioner contends that the Superior Court violated his right to procedural due process by changing the effective date of his Delaware sentence from March 14, 1991 to October 29, 2003 without providing him with an opportunity to be heard.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). A person has a constitutional right to be present at his sentencing proceeding and at a re-sentencing proceeding where the substance of one's sentence is changed. Mempa v. Rhay, 389 U.S. 128 (1967); cf. U.S. v. Portillo, 363 F.3d 1161, 1166 (11<sup>th</sup> Cir. 2004) (finding that defendant's absence when the court corrects clerical or ministerial mistakes pursuant to Federal Rule of Criminal Procedure 36 does not rise to a deprivation of due process). However, because "due process is flexible and calls for such procedural protections as the particular situation demands," not all sentencing situations trigger the right to be heard. Morrissey v. Brewer, 408 U.S. 471, 481 (1972); U.S. v. Tidwell, 178 F.3d 946, 950 (7<sup>th</sup> Cir. 1999) (in determining when a defendant's right to allocution attaches, "courts of appeals have been required to delineate those resentencing situations in which policies embodied in the right of allocution are at stake and

those in which its invocation would be superfluous"). For example, "[c]ourts have the power and duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake," American Trucking Associations, Inc. v. Frisco Transportation Company, 358 U.S. 133, 145 (1958); Gagnon v. United States, 193 U.S. 451, 453 (1904), and federal courts have held that corrections of this sort do not trigger the constitutionally protected right to be heard. See, e.g., Portillo, 363 F.3d at 1165-66; Ramos v. Gilkey, 1998 WL 12278, \*3 (N.D. Ill. Mar. 13, 1998).

As previously explained, the Superior Court intended for Petitioner's sentence to run consecutively to his Federal sentence. According to the Third Circuit Court of Appeals:

By definition, a consecutive sentence begins when the prior sentence is completed. There are many factors, including the defendant's behavior during incarceration, the decisions of a parole board, the possibility of an executive pardon or a successful appeal, and even prison conditions, which might determine when a defendant will complete his or her sentence. Because these factors are all beyond a sentencing court's control, the sentencing court will never know and can never determine with any degree of certainty the exact date a defendant will complete any given sentence. We know of no principle of law that requires a court to attempt such an exercise in futility; nor do we know of any principles that render a consecutive sentencing void or unjust based upon the resulting indeterminacy. As long as the defendant has adequate notice that a consecutive sentence may be imposed, a failure to determine the exact calendar date upon which a consecutive sentence is to begin does not deny the defendant due process of law.

U.S. v. Spiers, 82 F.3d 1274, 1282 (3d Cir. 1996) (internal citations omitted). Thus, despite the fact that the Delaware

Sentence Order lists March 14, 1991 as the effective date of custody, Petitioner could not begin to serve his Delaware sentence until his Federal sentence expired. See Malloy v. State, 852 A.2d 908 (table), 2004 WL 1535803, \*\*2 (Del. Jun. 28, 2004).

Moreover, at least with respect to capital sentences, the United States Supreme Court has held that "the order designating the day of execution is, strictly speaking, no part of the judgment, unless made so by statute." Holden v. Minnesota, 137 U.S. 483, 495 (1890). Other courts have extended this rule to non-capital sentences, finding that "the naming of a date when the sentence shall be executed, or the period of imprisonment begin, is not a part of the sentence proper, and therefore such date may be changed after the term expires." Bernstein v. U.S., 254 F. 967, 968 (4<sup>th</sup> Cir. 1918) (collecting cases); see also Sengstack v. Hill, 16 F. Supp. 61, 62 (M.D. Pa. 1936) (an order's statement regarding the time or place of executing a sentence is a ministerial act).

In Delaware, the quantum of the sentence, as expressed in years, months, and days, controls the length of the imposed sentence, not the dates specified in the sentence order. Frye v. State, 236 A.2d 424, 425 (Del. 1967). As such, the controlling issue here is Petitioner's six year mandatory sentence (ten years total), not the effective date as contained in the Sentencing

Order.

Applying the preceding principles to the facts of Petitioner's case, the Court finds that the Delaware Superior Court did not "resentence" Petitioner by adjusting the effective date of his sentence. See Bernstein, 254 F. at 968. The state court did not impose a new or different sentence, rather, it merely clarified the starting date of a preordained sentence to conform to the original sentencing intent that Petitioner's Delaware sentence begin after the expiration of his Federal sentence. Accordingly, the Court finds that the Superior Court did not violate Petitioner's procedural due process rights by changing the effective date of Petitioner's Delaware sentence to October 29, 2003 in his absence.<sup>6</sup>

#### **IV. 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

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<sup>6</sup>The Court notes that the original Sentence Order sets the effective date of Petitioner's custody as the date of his arrest, March 14, 1991, but the date of the Order is August 14, 1992. The Superior Court may have been attempting to give Petitioner credit for his pre-trial detention in Delaware. See Weber v. State, 655 A.2d 1219, 1220 (Del. 1995). It is unclear whether the Superior Court considered this issue when it clarified the effective date of Petitioner's Delaware sentence as being October 29, 2003. The Court does not address this issue, however, because Petitioner did not raise it in his Petition and Reply, nor has he exhausted state remedies with respect to this issue.

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).

For the reasons stated above, the Court concludes that Petitioner's claims do not warrant federal habeas relief. Reasonable jurists would not find these conclusions to be unreasonable. Consequently, the Court declines to issue a certificate of appealability.

#### **V. CONCLUSION**

For the foregoing reasons, Petitioner's request for habeas relief filed pursuant to 28 U.S.C. § 2254 will be denied.

An appropriate Order will be entered.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WILLIAM FRANCIS, JR., :  
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 Petitioner, :  
 :  
 v. : Civ. Act. No. 03-1137-JJF  
 :  
 THOMAS L. CARROLL, Warden, and :  
 M. JANE BRADY, Attorney General, :  
 :  
 Respondents. :

**ORDER**

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

1. Petitioner William Francis Jr.'s Petition For A Writ Of Habeas Corpus pursuant to 28 U.S.C. § 2254 is DENIED. (D.I. 1; D.I. 27.)
2. The Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2).

Dated: March 10, 2005

  
UNITED STATES DISTRICT JUDGE