

Farnan, Judge

I. INTRODUCTION

Petitioner Kenneth L. Guinn is a Delaware inmate in custody at the Delaware Correctional Center in Smyrna, Delaware. Currently before the Court is Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and a Motion for the Appointment of Counsel. (D.I. 2, 3.) For the reasons that follow, the Court concludes that Petitioner's habeas petition does not assert a claim cognizable on federal habeas review. Accordingly, the Court will deny his petition without reaching the merits of his claim, and deny his Motion for the Appointment of Counsel as moot. (D.I.s 2, 3.)

II. BACKGROUND

On February 8, 2000, Petitioner pled guilty to one count of aggravated menacing (11 DEL. C. ANN. §602(b)) and one count of possession of a firearm by a person prohibited (11 DEL. C. ANN. §1148). The Delaware Superior Court sentenced him to a total of five years incarceration on the aggravated menacing, and three years imprisonment on the weapons offense, to be suspended for decreasing levels of probation. State prosecutors entered a nolle prosequi on the remaining counts in the indictment.

Petitioner did not appeal his conviction or sentence, nor did he apply for state post-conviction relief. However, Petitioner did file at least two pro se Motions for the

Modification or Reduction of Sentence.¹ The Superior Court denied these Motions, and Petitioner has never appealed any of these denials to the Delaware Supreme Court. (D.I.s 2,15,16.)

On May 30, 2003, Petitioner filed the federal habeas petition currently before the Court. Reading the petition in conjunction with Petitioner's "Reply to Respondent['s] Answer," (D.I.s 2, 16.), Petitioner appears to challenge the Delaware Superior Court's denial of his first Motion for Modification of Sentence for being time-barred. (D.I. 16.)

Respondent has filed an Answer asking the Court to dismiss Petitioner's federal habeas claim for failure to assert a claim cognizable on federal habeas review.

Petitioner's federal habeas petition is now ripe for review.

III. DISCUSSION

A federal district 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). Claims based on errors

¹Petitioner attached a copy of a Motion for Modification of Sentence dated December 20, 2000 to his habeas petition. He also attached a copy of a Delaware Superior Court Order, dated April 30, 2003, denying a Motion for Modification of Sentence for being repetitive. (D.I. 2, Attachments.) In his "Reply to Respondent's Answer," Petitioner appears to allege that he followed the advice of counsel in waiting to file a Motion for Reduction or Modification of Sentence. (D.I. 16.) Petitioner attached copies of correspondence with the Superior Court, his June 18, 2002 Motion for Reduction of Sentence, and the Superior Court's November 7, 2001 Order denying his Motion. Id.

of state law are not cognizable on federal habeas review. Pulley v. Harris, 465 U.S. 37, 41 (1984); Riley v. Harris, 277 F.3d 261, 310 n.8 (3d Cir. 2001). Moreover, "habeas corpus relief is not available when a prisoner challenges errors in state postconviction procedures." Ferguson v. State, 1996 WL 1056727, at *13 (D. Del. Dec. 13, 1996).

In the present case, Petitioner appears to be challenging the Delaware Superior Court's denial of his first Motion for Modification of Sentence for being time-barred. However, as Respondent correctly argues, this claim fails to assert a cognizable ground for federal habeas review.² Rather, Petitioner's claim asserts a state law error. Accordingly, the Court cannot consider the merits of the claim.

Additionally, Petitioner has filed with the Court a Motion for the Appointment of Counsel. (D.I. 3.) Petitioner asserts that counsel should be appointed because: 1) he is incarcerated; 2) he is unskilled in the law; 3) his access to the law library is limited; and 4) appointment of counsel would serve "the best interests of justice." Id.

It is well settled that Petitioner does not have a Sixth Amendment right to counsel in this habeas proceeding. See Pennsylvania v. Finley, 481 U.S. 551, 555 (1987); United States

²Because this claim is not cognizable, the Court need not consider whether it is exhausted. See Tillett v. Freeman, 868 F.2d 106, 108 (3d Cir. 1989).

v. Roberson, 194 F.3d 408, 415 n. 5 (3d Cir. 1999). However, a district court may appoint counsel to represent an indigent habeas petitioner "if the interest of justice so requires." Rule 8(c), 28 U.S.C. fol. § 2254. As explained above, the Court is dismissing Petitioner's § 2254 petition because it fails to allege a ground cognizable on federal habeas review. In this circumstance, the "interests of justice" do not require the appointment of counsel. See 18 U.S.C. § 3006A(a)(2)(B). Thus, the Court will deny Petitioner's Motion for the Appointment of Counsel.

IV. Certificate of Appealability

Finally, the Court must decide whether to issue a certificate of appealability. See Third Circuit Local Appellate Rule 22.2. A certificate of appealability may only be issued when a petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This showing is satisfied when the petitioner demonstrates "that reasonable jurists would find the district court's assessment of the denial of a constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

For the reasons stated above, the Court concludes that Petitioner has failed to present the Court with a claim cognizable on federal habeas review. Reasonable jurists would not find this conclusion unreasonable. Consequently, Petitioner

has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

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**

KENNETH L. GUINN,)	
)	
Petitioner,)	
)	
v.)	Civ. Act. No. 03-524-JJF
)	
THOMAS L. CARROLL,)	
Warden,)	
)	
Respondent.)	
)	
)	

ORDER

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

1. Petitioner Kenneth L. Guinn's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (D.I. 2.) is DENIED.
2. Petitioner's Motion for Appointment of Counsel (D.I. 3.) is DENIED as moot.
3. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: February 24, 2004

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE