IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MAURICE LAND,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 03-843-JJF
	:	
THOMAS L. CARROLL, Warden,	:	
and STATE OF DELAWARE, Dept.	:	
Of Probation and Parole,	:	
	:	
Respondents.	:	

Maurice Land. Pro Se Petitioner.

Thomas E. Brown, Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware. Attorney for Respondent.

MEMORANDUM OPINION

June 23, 2004
Wilmington, Delaware

Farnan, District Judge

I. INTRODUCTION

Petitioner Maurice Land 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. (D.I. 1.)

II. BACKGROUND

In separate trials in 1974 and in 1979, Petitioner was convicted of first degree burglary, second degree burglary, third degree assault, and two weapons offenses. He was sentenced to a total of 41 years imprisonment, and he was released on conditional release in July 1998. (D.I. 12.)

As documented in a Parole Violation Report dated June 19, 2000, Petitioner tested positive for cocaine on three separate occasions in 1999 and 2000. He was referred to NET treatment and entered into a program. Thereafter, Petitioner tested positive for cocaine on June 13, 2000. (D.I. 14, "Violation Rep. - Level 2", June 19, 2000.) On June 30, 2000, after Petitioner admitted to using marijuana, a preliminary hearing officer found probable cause that Petitioner had violated the conditions of his mandatory release. (D.I. 14, Lettr. from "Bureau of Adult Correction/Probation and Parole" dated Jul. 5, 2000). In September 2000, the Parole Board found that Petitioner had

violated the conditions of his mandatory release and revoked his parole. However, the Board certified Petitioner for parole upon successful completion of a pre-release program, a drug abuse program (CREST), and 3 months of work release. (D.I. 14, 9/13/00 Lettr. "Re: Hearing on Mandatory Release Violation Charges.")

Petitioner successfully completed CREST, and on January 10, 2002, he began serving his three months of work release. On January 29, 2002, Petitioner tested positive for cocaine. He was administratively transferred to a higher security pending further Parole Board review/action.

Petitioner's first Parole Violation Hearing was scheduled to occur on May 14, 2002, but was deferred at his request. In September 2002, Petitioner filed a Petition for a Writ of Habeas Corpus in the Delaware Superior Court. He alleged that he had not received notice of the alleged parole violation and that he had not been given a revocation hearing. The Superior Court denied the Writ, concluding that Petitioner did not state a claim for habeas relief because the deferral of the hearing had been at his request. (D.I. 1, Ex. 1.) Petitioner did not appeal this decision.

Another Parole Violation Hearing was scheduled for December 2002, but again, it was deferred at Petitioner's request. In January 2003, Petitioner applied to the Delaware Superior Court for a Writ of Mandamus, complaining that he had not been given a

preliminary hearing before his administrative transfer in January/February 2002 to prison. The Superior Court denied the Writ, and Petitioner did not appeal. Finally, Petitioner's Parole Violation Hearing occurred on February 4, 2003, at which time the Board of Parole rescinded its September 2000 parole certification.

Subsequently, on April 8, 2003, Petitioner filed a Writ of Mandamus in the Delaware Supreme Court, seeking to compel the Board of Parole to grant a new hearing. The Delaware Supreme Court denied the Writ, holding that it did not have original jurisdiction over the Board of Parole.

Currently before the Court is Petitioner's § 2254 Petition, dated August 25, 2003.

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). 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 and Procedural Default

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). 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:

> 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).

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). The exhaustion requirement is based on principles of comity, requiring the 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). Generally, the 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).

A petitioner's failure to exhaust state remedies will be excused if state procedural rules prevent him from seeking further relief in state courts. Lines v. Larkin, 208 F.3d 153, 160 (3d Cir. 2000); Wenger v. Frank, 266 F.3d 218, 223 (3d Cir. 2001); see Teague v. Lane, 489 U.S. 288, 297-98 (1989). Although deemed exhausted, such claims are nonetheless procedurally defaulted. Coleman v. Thompson, 501 U.S. 722, 749 (1991); Lines, 208 F.3d at 160. A federal habeas court cannot review the merits of a procedurally defaulted claim unless the petitioner demonstrates either cause for the procedural default and actual prejudice resulting therefrom, or that a fundamental

miscarriage of justice will result if the court does not review the claim. McCandless v. Vaughn, 172 F.3d 255, 260 (3d Cir. 1999); Coleman, 501 U.S. at 750-51 (1999); Caswell v. Ryan, 953 F.2d 853, 861-62 (3d Cir. 1992).

Although a federal district court cannot grant federal habeas relief on an unexhausted claim, a district court can deny a habeas claim on the merits, even if the claim is unexhausted. See 28 U.S.C. § 2254(b)(2); Chadwick v. Janecka, 312 F.3d 597, 604 (3d Cir. 2002).

IV. DISCUSSION

Petitioner's habeas Petition asserts 12 numbered claims. However, upon closer scrutiny, these 12 claims can be summarized into 3 distinct claims as follows: (1) Petitioner was re-committed to the DOC for a technical drug violation of his "mandatory conditional release," and the Board of Parole violated his due process rights by failing to issue a warrant for his re-commitment and by failing hold a preliminary hearing to determine probable cause before revoking his parole (D.I. 1, Claims 1,4,6,7,8,12.); (2) Petitioner was originally sentenced in 1974 before the enactment of SENTAC and TIS, with a "mandatory release" date set for July 1997, and his "conditional release" under SENTAC and TIS to Level 4 enhanced the length of his confinement (D.I. 1, Claims 3, 5.); and (3) the Delaware Superior Court erred in denying his Writ of Habeas Corpus, telling him

that the proper way to proceed was via a Writ of Mandamus, yet the Delaware Supreme Court refused to issue a Writ of Mandamus on procedural grounds. (D.I. 1, Claims 9, 10, 11.)

Respondents contend that the preliminary hearing/warrant claim (Claim 1) is procedurally barred from federal habeas review. Respondents also contend that Petitioner's SENTAC/TIS claim (Claim 2) is without merit, and that his claim regarding the Delaware state courts' decisions (Claim 3) does not state a basis for federal habeas relief. As such, Respondents ask the Court to dismiss Petitioner's entire § 2254 Petition.

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

A. Administrative warrant/preliminary hearing claim

Respondents correctly assert that Petitioner failed to exhaust state remedies for his administrative warrant and preliminary hearing claim. A state prisoner challenging the revocation of his parole must satisfy the exhaustion requirement in 28 U.S.C. § 2254(b)(1). See Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973)(exhaustion is required for challenges to the actions of a state administrative body); Carter v. Williams, 2002 WL 531231, at *2-*3 (D. Del. Apr. 2, 2002). In Delaware, Board of Parole decisions may be challenged through a Petition for a Writ of Mandamus in the Delaware Superior Court or through a Petition for a Writ of Certiorari in the Delaware Supreme Court. Carter, 2002 WL 531231, at *2; Wilson v. Carper, 2002 WL 169248,

at *2-3 (D. Del. Jan. 31, 2002). As such, when a petitioner challenges his revocation of parole by way of a Writ of Mandamus, he must still appeal the Superior Court's decision in order to exhaust state remedies. 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).

Here, Petitioner presented his preliminary hearing claim to the Superior Court by two different methods. First, Petitioner filed a Petition for a Writ of Habeas Corpus, complaining that he had not received notice of the alleged parole violation or been given a revocation hearing. However, as explained above, a Writ of Habeas Corpus is not the proper method by which to challenge a revocation of parole. Second, Petitioner properly applied for a Writ of Mandamus in the Superior Court, complaining that he had not been given a preliminary hearing before his re-commitment to prison. Yet, Petitioner never appealed the Superior Court's denial of this Writ, thereby failing to exhaust state remedies with respect to his preliminary hearing claim.

Additionally, Petitioner argues that he never received an administrative warrant prior to his re-commitment to prison. However, he never presented this claim to the Delaware State courts. Thus, Petitioner has also failed to exhaust state remedies with respect to this claim.

Petitioner's failure to exhaust state remedies is excused,

however, because state procedural rules prevent him from pursuing further state court relief. See Coleman, 501 U.S. at 750; Lines, 208 F.3d at 160. Any attempt now to appeal the dismissal of the Writ of Mandamus would be untimely under state law. Del. Supr. Ct. R. 6(a)(criminal appeals must be filed within thirty days after a sentence is imposed, and post-conviction appeals must be filed within thirty days after entry of a judgment or order in a proceeding for post-conviction relief). Petitioner also cannot present his claim again before the Superior Court because, under Delaware law, his failure to appeal the first denial of Mandamus bars reconsideration of the claims in a second Mandamus action. New Castle County v. Sterling Properties, Inc., 379 A.2d 1125, 1129 (Del. 1977).

Although Petitioner's failure to exhaust is excused, the unexhausted claim is still procedurally defaulted. As a result, federal habeas review of the claims is foreclosed unless Petitioner demonstrates cause and prejudice, or a miscarriage of justice. See Coleman, 501 U.S. at 750-51; Lines, 208 F.3d at 160.

Petitioner offers no explanation for his failure to appeal the Superior Court decision, and the Court can discern no external impediment that may have prevented him from appealing the denial of his Mandamus action. See Murray, 477 U.S. at 492. As such, Petitioner has failed to demonstrate cause for his procedural default.

Petitioner's failure to establish cause for his procedural default relieves the Court of its obligation to determine if Petitioner has established actual prejudice. See Coleman, 501 U.S. at 757. Nevertheless, Petitioner cannot demonstrate any actual prejudice resulting from the default of these claims.

First, the Parole Board only certified Petitioner for release. The Board's subsequent decision to rescind its earlier certification does not implicate any liberty interest requiring due process protections. See, e.g., Jago v. Van Curen, 454 U.S. 14 (1981); McCall v. Delo, 41 F.3d 1219 (8th Cir. 1994); Debrose v. Chesney, 1996 WL 4093, Order at **2-3 (E.D. Pa. Jan. 2, 1996). Basically, a prisoner does not have an enforceable right to be paroled. Eskridge v. Casson, 471 F. Supp. 98 (D. Del. 1979).

Second, the facts of this case demonstrate that the failure to provide Petitioner with a preliminary hearing did not violate his due process rights. In Morrissey v.Brewer, 408 U.S. 471 (1972), the Supreme Court held that a parolee is entitled to minimum due process requirements. Based on the facts before it, the Morrissey Court ruled that a parolee is entitled to two hearings: a preliminary hearing at the time of the arrest and detention to determine whether probable cause exists to believe the parolee violated his parole, and a final revocation hearing. Id. at 485-89. However, the Morrissey Court specifically noted that "[w]e cannot write a code of procedure . . . [o]ur task is

limited to deciding the minimum requirements of due process." Id. at 488-89. As such, "under the facts of Morrissey, the two-hearing requirement was just one way to satisfy minimum due process; it is not the only way in every case." Pierre v. Washington State Board of Prison Terms and Paroles, 699 F.2d 471, 473 (9th Cir. 1983).

Here, according to Petitioner, after his urine tested positive for cocaine on January 24, 2002,[1] Petitioner went before the Institution Classification Board (M.D.T.) on February 6, 2002. (D.I. 14, Petitioner's Brief for Writ of Mandamus in Land v. Biancha, 03M-01-048-CHT, dated 3/12/2002,). The MDT Board found him guilty of drug use. (Id.) According to the Superior Court, it was the Board of Parole, not the MDT, that found Petitioner guilty of violating the conditions of his parole. (D.I. 14, Land v. Biancha, C.A. No. 03M-01-048-CHT, Order at ¶1 (Del. Super. Ct. Feb. 12, 2003)). Pursuant to 28 U.S.C. § 2254(e)(1), the Court presumes that the Board of Parole was the entity determining Petitioner's drug use violation. Nevertheless, the designation of the entity's name making the February 6, 2002 finding does not affect the fact that the finding established the requisite probable cause for a parole

[1]The record indicates that the urinalysis was actually taken on January 29, 2002, and the results were received on January 31, 2002. (D.I. 14, Feb. 13, 2002 Lettr. to Ms. Lichtenstadter, Chairpeson, Bd. Of Parole.)

violation. The Court concludes that the February 6, 2002 hearing satisfied the procedural due process requirements established by Morrissey.[2] Thus, Petitioner has failed to establish actual prejudice to excuse his procedural default. See Murray, 477 U.S. at 494.

Additionally, Petitioner cannot establish actual prejudice with respect to his administrative warrant claim because his assertion that he should have been personally served with an administrative warrant is completely meritless. Under Delaware law, the decision to grant an administrative warrant is discretionary, not mandatory. See 11 DEL. CODE ANN. § 4352(a). If an administrative warrant is issued, then it must be personally served on the parole violator. However, if the parole violator is arrested without a warrant, then a written statement

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[2]Further, "[o]nce a final parole revocation hearing has been held, a parole violator's concerns about due process violations committed during the preliminary hearing are mooted unless those violations caused the violator prejudice at the final hearing." Reilly v. Morton, 1999 WL 737916, at *6 (E.D.N.Y. Sept. 16, 1999)(citing United States v. Basso, 632 F.2d 1007, 1011-12(2d Cri. 1980); Barton v. Malley, 626 F.2d 151, 159 (10th Cir. 1980); Collins v. Turner, 599 F.2d 657, 658 (5th Cir. 1979

Here, Petitioner has failed to demonstrate how the lack of a preliminary hearing prejudiced him during his revocation hearing. See Gibbs v. Brewington-Carr, 2000 WL 1728360, at *4 (D.Del. Jan. 11, 2000). For example, he does not identify any potentially exculpatory evidence that was unavailable to him because of the delay. The Court thus concludes that the failure to provide Petitioner with a preliminary hearing did not "infect his [revocation hearing] with error of constitutional dimensions." See Murray, 477 U.S. at 494.

regarding the violation is to be delivered to the official in charge of the facility to which the parolee is brought for detention. Id. There is no requirement of service on the parolee.

Here, the record does not indicate that an administrative warrant was issued. Instead, it appears that, pursuant to the statutorily established procedure, a written statement regarding Petitioner's violation was delivered to the warden of the facility, Vincent R. Bianco. (D.I. 14, Feb. 13, 2002 Letter to Ms. Lichtenstadter from Kent D. Raymond, Counselor Supervisor MCI.) Thus, Petitioner cannot demonstrate any prejudice resulting from the failure to serve him with a warrant that was not issued.

Alternatively, a federal court may excuse a procedural default if the petitioner demonstrates that failure to review the claim will result in a fundamental miscarriage of justice because he is actually innocent. Edwards v. Carpenter, 529 U.S. 446, 451 (2000); Wenger v. Frank, 266 F.3d 218, 224 (3d Cir. 2001); Murray, 477 U.S. at 496. However, Petitioner does not allege that he is actually innocent of the charges for which he was convicted, nor does he allege that he did not violate his parole. As such, this exception does not apply.

B. SENTAC/TIS CLAIM

Petitioner appears to believe that the ex post facto clause

was violated when he was "conditionally released" in 1997 to Level 4, despite the "mandatory release" requirement contained in his original 1974 sentence. Respondents correctly assert that Petitioner never presented this claim to the Delaware state courts. Nevertheless, pursuant to 28 U.S.C. § 2254(b)(2), they ask the Court to deny the claim as meritless.

The Court agrees with Respondents that Petitioner's ex post facto claim is without merit. When Petitioner was released in 1998, he was still released on parole. As such, he had to serve his parole until the maximum expiration of his prison term. See Hall v. Carr, 692 A.2d 888, 892 (Del. 1997).

Here, Petitioner's ex post facto challenge appears to stem from the use of the term "conditional release" in his parole papers. However, parole and "conditional release" are similar forms of early release because they are both "conditioned upon the inmate's compliance with all of the conditions of supervision associated with his early release of confinement."[3] Jackson v. Multi-Purpose Criminal Justice Facility, 700 A.2d 1203, 1206 (Del. 1997). The use of the term "conditional release" does not implicate the ex post facto clause because no retroactively applied provision or law was imposed to increase a punishment previously imposed. See Lynce v. Mathis, 519 U.S. 433, 441

[3]Moreover, the definition for "conditional release" was not altered by TIS. Compare 11 Del. C. Ann. § 4302(4)(1988) with 11 Del. C. Ann. § 4302(4)(2003).

(1997). Thus, the Court will dismiss this claim as meritless.

C. State court decisions

Finally, Petitioner appears to assert that the Delaware Supreme Court's refusal to grant a Writ of Mandamus on jurisdictional grounds was erroneous in light of the Superior Court's statement that his challenge could only be brought by a Mandamus proceeding. This claim challenges the Delaware courts' application of post-conviction procedures, thus, it does not state a basis for a federal claim under 28 U.S.C. § 2254. Gattis v. Snyder, 46 F. Supp. 2d 344, 384 (D. Del 1999).

Moreover, Petitioner's argument is without merit. First, even though a Writ of Mandamus is the vehicle by which to challenge the Parole Board's decision to revoke parole, the parolee must still satisfy the standards for issuing the writ. Here, in Petitioner's first state Mandamus proceeding, the Superior Court concluded that the Parole Board's decision to grant a preliminary hearing was discretionary, thereby precluding any ground for Mandamus. Land v. Biancha, C.A. No. 03M-01-048-CHT, Order (Del. Super. Ct. Feb. 12, 2003). Second, as previously explained, the proper procedure for challenging the Parole Board's decision is to file an application for a Writ of Mandamus in the Delaware Superior Court. See supra at 9-10. However, Petitioner filed his second Mandamus proceeding in the Delaware Supreme Court, not the Superior Court. The Delaware

Supreme Court thus properly held that it did not have original jurisdiction over Petitioner's mandamus proceeding. In re Land, No. 205, 2003, Order (Del. Aug. 4, 2003). As such, Petitioner's argument is without merit.

IV. Certificate of Appealability

Finally, the Court must decide whether to issue a certificate of appealabilty. 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 is not entitled to federal habeas relief because his claims are procedurally defaulted and without merit. Reasonable jurists would not find these conclusions 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

MAURICE LAND,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 03-843-JJF
	:	
THOMAS L. CARROLL, Warden, and STATE OF DELAWARE, Dept. Of Probation and Parole,	:	
	:	
Respondents.	:	

ORDER

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

1. Petitioner Maurice Land's Petition For A Writ Of Habeas Corpus pursuant to 28 U.S.C. § 2254 (D.I. 1.) is DENIED.

2. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: June 23, 2004

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE