

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LAVAR S. SIENA :
 :
 Petitioner, :
 :
 v. : Civ. Act. No. 03-959-JJF
 :
 THOMAS L. CARROLL, Warden, :
 :
 Respondent. :
 :

Lavar S. Siena. Pro se Petitioner.

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

MEMORANDUM OPINION

April 5, 2005
Wilmington, Delaware

Joseph A. Farnan
Farnan, Judge

I. INTRODUCTION

Petitioner Lavar S. Siena 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. FACTUAL AND PROCEDURAL BACKGROUND

In April 1996, a Delaware grand jury indictment charged Petitioner with attempted murder, first degree assault, multiple robbery and weapons offenses, and conspiracy. Petitioner pled guilty to three counts of first degree robbery, one weapons offense, and one count of first degree assault (as a lesser included offense of the attempted murder charge).

A pre-sentence investigation was ordered, and in November 1996, Petitioner was sentenced to a total of nineteen years incarceration at Level V, to be suspended after thirteen years for decreasing levels of probation. The sentencing order provided that Petitioner's seven year Level V sentence for assault was to be suspended after one year for an additional year at "Supervision Level 4 - Halfway House or Inpatient Substance Abuse Treatment." The sentencing order also provided that Petitioner would be assigned to Residential and Outpatient Drug/Alcohol Programs until such programs were completed. Siena

v. State, 820 A.2d 373 (Del. 2003).

In January 2003, Petitioner filed in the Delaware Superior Court a Motion for Modification of Sentence, contending that there was no basis for the imposition of the drug treatment requirement because he had no history of drug or alcohol abuse. (D.I. 15, Mar. 3, 2003 "Motion to Affirm" in Siena v. State, No.67,2003, at ¶ 2). The Superior Court denied the Motion, holding that it was untimely under Delaware Superior Court Criminal Rule 35(b), and that the sentence was, in any event, appropriate. Id. at B4. Petitioner appealed, and the Delaware Supreme Court affirmed the Superior Court's decision. Siena v. State, 820 A.2d 373 (Del. 2003)).

After the Delaware Supreme Court denied his appeal, Petitioner filed a "Motion for Reargument" in the Delaware Supreme Court. He argued that he just found out that the Superior Court used his juvenile records in sentencing him, and that such use was an abuse of discretion. (D.I. 15, "Motion for Reargument" in Siena v. State, No.67,2003.) The Delaware Supreme Court denied the Motion. (D.I. 15, Siena v. State, No.67,2003 Order (Del. Apr. 23, 2003)).

In papers dated October 15, 2003, Petitioner filed the instant Petition For A Writ Of Habeas Corpus. (D.I. 1.) Respondent asks the Court to dismiss the Petition because one claim raises a state law issue, and the other claim does not

warrant federal habeas relief under 28 U.S.C. § 2254(d)(1).
(D.I. 12.)

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

Although not explicitly stated, Petitioner appears to challenge the Superior Court's use of his juvenile Family Court record to fashion his adult sentence. He also appears to challenge the Superior Court's imposition of a provisional drug treatment, arguing that he has no history of drug use.¹

¹Respondent does not address the timeliness of Petitioner's Petition, but the dates of the relevant state court proceedings strongly indicate that the Petition may be time-barred. Long v. Wilson, 393 F.3d 390 (3d Cir. Dec. 29, 2004) (noting that the limitations issue was raised by the federal magistrate judge "as part of the preliminary consideration of the matter").

A. The State Court's Use Of Juvenile Records In Sentencing An Adult Is A Matter Of State Law Not Cognizable On Federal Habeas Review

Petitioner contends that the Delaware Superior Court improperly considered his juvenile Family Court records when it sentenced him as an adult. Respondent acknowledges that Petitioner exhausted state remedies by presenting this claim to the Delaware Supreme Court in his "Motion for Reargument" of the Superior Court's denial of his Rule 35(b) Motion. (D.I. 12); See Siena v. State, No.67, 2003 Order (Del. Apr. 23, 2003).

The issue as to whether a state court can refer to a defendant's juvenile record in determining his subsequent adult sentence is a question of state law. See U.S. v. Bucaro, 898 F.2d 368, 373 (3d Cir. 1990) ("juvenile records sometimes can be used for sentencing purposes in later criminal proceedings," and there is no due process violation if state law permits the use of the juvenile record). It is well-settled that "[f]ederal habeas corpus relief does not lie for errors of state law." Lewis v. Jeffers, 497 U.S. 764, 780 (1990); Johnson v. Rosemeyer, 117 F.3d 104, 109 (3d Cir. 1997) ("[A] state court's misapplication of its own law does not [] raise a constitutional claim"); see also Mullaney v. Wilbur, 421 U.S. 684, 691 (1975) ("Federal courts entertaining petitions for writs of habeas corpus are bound by the construction placed on a State's criminal statutes by the courts of that State"). Further, a state court's sentencing

decision and claims arising from such decision are not constitutionally cognizable unless the sentence exceeds statutory limits or is wholly unauthorized by law. See Dorn v. Kearney, 1997 WL 811565, at *2 (D. Del. Dec. 10, 1997); Felicetty v. Bianco, 2003 WL 21402544, at *6 (D. Del. Jun. 10, 2003).

Here, Petitioner does not contend, and the record does not indicate, that his sentence exceeds the statutory limits. Moreover, in Delaware, a sentencing court can use juvenile records when sentencing an adult. Massey v. State, 256 A.2d 271 (Del. 1969). Thus, as presented, Petitioner's claim that the Superior Court should not have used his juvenile records in fashioning his adult sentence fails to state a basis for federal habeas relief.

B. The Imposition Of Provisional Drug Treatment Does Not Warrant Federal Habeas Relief Under § 2254(d) (1)

Petitioner also contends that the Superior Court abused its discretion in provisionally requiring substance abuse treatment prior to the suspension of his sentence for the assault conviction because he has no history of drug or alcohol abuse. As previously explained, the Delaware Superior Court may refer to a defendant's juvenile record when fashioning his adult sentence. Here, Petitioner's juvenile record included charges for drug possession and possession of drug paraphernalia. Although inartfully presented, by arguing that he has no history of drug abuse, Petitioner appears to contend that the Superior Court

abused its discretion by inferring drug abuse from the drug possession charges in his juvenile record. To the extent Petitioner's claim raises an error in the application of state law, he fails to present a claim cognizable on federal habeas review. See Lewis, 497 U.S. at 780; Johnson, 117 F.3d at 109.

However, the Court is required to liberally construe a pro se petitioner's habeas claims. See Estelle v. Gamble, 429 U.S. 97, 106 (1976) (pro se documents are to be liberally construed). Essentially, Petitioner argues that the Superior Court based the treatment condition on incorrect assumptions. The United States Supreme Court has long recognized that a sentence based on extensive and materially incorrect information can violate the Due Process Clause. United States v. Tucker, 404 U.S. 443 (1972); Townsend v. Burke, 334 U.S. 736 (1948); United States v. Jackson, 649 F.2d 967, 981 (3d Cir. 1981); Bibby v. Tard, 741 F.2d 26, 30 (3d Cir. 1984); Del Piano, 575 F.2d at 1067 .

Liberally construing Petitioner's claim, the Court concludes that, to the extent the claim implicates the Due Process Clause, it is cognizable on federal habeas review. Reynolds v. Ellingsworth, 843 F.2d 712, 716-7 (3d Cir. 1988) (finding that claim alleging abuse of discretion by trial court implicated "due process concern of whether the trial court 'fail[ed] to observe that fundamental fairness essential to the very concept of justice'" (citing Donnelly v. DeChristoforo, 416 U.S. 637, 642

(1974)); Del Piano v. U.S., 575 F.2d 1066, 1067 (3d Cir. 1978) (when the sentencing court considered improper data in fashioning the sentence, then the "procedures inherent in the exercise of [the court's] discretion" may be reviewed in a collateral proceeding); Stevens v. Beyer, 1994 WL 146358, *6 (D.N.J. Apr. 21, 1994).

Petitioner raised this claim in his appeal of the Superior Court's denial of his Motion for Modification of Sentence, thereby exhausting state remedies. See Siena, 820 A.2d at 373. The Delaware Supreme Court denied this claim on the merits. Id. Thus, the Court must determine whether the Delaware Supreme Court's decision is contrary to, or an unreasonable application of, clearly established federal law as determined by the United States Supreme Court. See 28 U.S.C. § 2254(d)(1).

A state court 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's] cases," Williams v. Taylor, 529 U.S. 362, 405 (2003), or if it "decides a case differently than [the Supreme Court] has done on a set of materially indistinguishable facts." Bell v. Cone, 535 U.S. 685, 687 (2002).

A state court decision is an unreasonable application of clearly established federal law if the state court "correctly identifies the governing legal rule but applies it unreasonably

to the facts of a particular prisoner's case." Id. at 407-08. A state court "does not have to recite a specific case name in order to apply the principles enunciated within [the Supreme Court] case." Marshall v. Hendricks, 307 F.3d 36, 83 n.35 (3d Cir. 2002). Further, "[i]n determining whether a state decision is an unreasonable application of Supreme Court precedent . . . 'decisions of federal courts below the level of the United States Supreme Court may be helpful . . .'" Fischetti v. Johnson, 384 F.3d 140, 149 (3d Cir. 2004).

The threshold inquiry under § 2254(d)(1) is to determine the clearly established federal law governing the issue at the time the petitioner's conviction became final. Williams, 529 U.S. at 411; Fischetti, 384 F.3d at 148. It is well-settled that sentencing courts have "broad discretion in imposing a sentence within a statutory range." United States v. Booker, 125 S.Ct. 738, 750 (2005). Courts can consider "the fullest information possible concerning the [petitioner's] life and characteristics," Williams v. New York, 337 U.S. 241, 247 (1949); see also United States v. Grayson, 438 U.S. 41 (1978), including "a defendant's past criminal behavior, even if no conviction resulted from that behavior." Nicols v. United States, 511 U.S. 738, 747 (1994).

Further, when, as here, a sentence falls within statutory

limits² and the petitioner alleges a Due Process violation, he must demonstrate that "the state court's sentencing decision was wholly devoid of discretion or amounted to an arbitrary or capricious abuse of discretion, or that an error of law resulted in the improper exercise of the sentencer's discretion and thereby unjustly deprived the petitioner of his liberty."³ Moore v. Irvin, 908 F.Supp. 200, 208 (N.D.N.Y. 1995); see also Doyle v. Scott, 2004 WL 2790501, at *9 (E.D. Mich. Dec. 1, 2004) ("In considering a habeas petition, a federal court will not set aside, on allegations of unfairness or an abuse of discretion, terms of a sentence that [are] within state statutory limits

²Assault in the first degree is a class B felony. 11 Del. C. Ann. § 613(c). Pursuant to 11 Del. C. Ann. § 4205(b)(2), the term of incarceration for a class B felony (assault in the first degree) is imprisonment at Level V for not less than 2 years and not more than 25 years. Here, Petitioner's first degree assault sentence was for seven years at Level V, suspended after one year for an additional year at Level IV: halfway house or inpatient substance abuse treatment.

³When a federal district court imposes special conditions on supervised release that are not related to the offense of conviction, the federal circuit courts review the imposition of the under an abuse of discretion standard. United States v. Sicher, 239 F.3d 289, 290 (3d Cir. 2000). Generally, the courts uphold such conditions provided they are reasonably related to factors contained in the applicable sentencing statute. U.S. v. Loy, 191 F.3d 360, 370 (3d Cir. 1999); U.S. v. Wise, 391 F.3d 1027, 1031-32 (9th Cir. 2004). The Court acknowledges that a federal court's interpretation of a federal sentencing statute does not constitute "clearly established federal law" for the purposes of § 2254(d)(1). See Early v. Packer, 537 U.S. 3, 10 (2002). Nevertheless, the Court refers to these federal cases for the method of looking at the factors contained in the sentencing statute to determine whether a sentencing court abused its discretion in imposing a condition on supervised release.

unless the sentence is so disproportionate to the crime as to be arbitrary and shocking”).

Applying the aforementioned principles to Petitioner’s claim, the Court concludes that federal habeas relief is not warranted under § 2254(d)(1). First, the Delaware Supreme Court reviewed the Superior Court’s imposition of the drug treatment condition for an abuse of discretion, which, in Delaware, is demonstrated if the “judge based the sentence of false factual predicates or was biased or vindictive.” Siena, 820 A.2d at 373. The Delaware Supreme Court found that Petitioner was “charged previously with drug offenses,” thereby implicitly finding that the sentence was not based on false factual predicates. Id. The Delaware Supreme Court’s review of the factual basis for the sentence parallels the factual review required by Supreme Court precedent. Thus, the Delaware Supreme Court’s rejection of Petitioner’s argument is not contrary to clearly established federal law.

Further, because the applicable Delaware statute grants the Superior Court discretion to impose a drug treatment program, even without actual evidence of substance abuse, See 11 Del. C. Ann. § 4204(c)(8) & (m),⁴ the state courts did not abuse their

⁴11 Del. C. Ann. § 4204(c)(8) states, in pertinent part:
When a person is convicted of any offense other than a class A felony the court may . . . [i]mpose any sentence as authorized in this subsection to include any special condition such as . . . participation in a

discretion in imposing (and upholding) the drug treatment condition. Here, Petitioner's juvenile record includes charges for drug possession and possession of drug paraphernalia, and he does not challenge the accuracy of this record. Courts routinely consider the quantity of drugs possessed, the type of paraphernalia possessed, and the surrounding circumstances to determine if the accused's possession of drugs was for personal use or for distribution. C.f. U.S. v. Valencia, 907 F.2d 671, 678 (7th Cir. 1990) ("the intent to distribute drugs has been inferred from the possession of a quantity of drugs larger than needed for personal use . . . or from possession of drug-packaging paraphernalia"); U.S. v. Ricks, 989 F.2d 501, at **8 n.12 (6th Cir. 1993); U.S. v. Franklin, 728 F.2d 994, 1000 (8th Cir. 1984); U.S. v. Persaud, 2004 WL 1960221, at *2 (D. Del. Sept. 2, 2004); U.S. v. Fleming, 2004 WL 1965035, at *2 (E.D. Pa. Aug. 11, 2004); White v. State, 840 A.2d 643, **3 (Del. 2003) (where quantity and value of cocaine was inconsistent with

drug/alcohol treatment program, education program, community service program or other like programs.

11 Del. C. Ann. § 4204(m) states:

As a condition of any sentence, and regardless of whether such sentence includes a period of probation or suspension of sentence, the court may order the offender to engage in a specified act or acts, as deemed necessary by the court to ensure the public peace, the safety of the victim or the public, the rehabilitation of the offender . . . or for any other purpose consistent with the interests of justice.

claim of personal use, and no paraphernalia consistent with drug use was found, then evidence was sufficient to support finding that defendant intended to deliver cocaine). Consequently, it was reasonable for the Superior Court to determine that Petitioner used drugs and could benefit from substance abuse treatment.

In short, "given the evidence . . . cited earlier as a basis for the drug restriction and the legitimacy of the goal of rehabilitation . . . [even though] the record may not support the conclusion that [Petitioner] has a serious drug problem . . . it also does not compel the conclusion that he completely lacks any substance abuse problem."⁵ U.S. v. Landry, 2004 WL 2786317, at *4 (3d Cir. Dec. 6, 2004) (not precedential) (upholding imposition of drug treatment condition on supervised release on the basis of teenage drug use) (internal quotations and citations omitted). The Court concludes that the Delaware Supreme Court did not unreasonably apply clearly established federal law in affirming Petitioner's sentence. Thus, federal habeas relief for this claim is not warranted under § 2254(d)(1).

⁵Moreover, Petitioner will only be placed in a drug treatment program if his evaluation indicates a need for such treatment. (See D.I. 15, Motion to Affirm in Siena v. State, No.67,22003 Exh. B1, B2.) If he does not need treatment, the sentencing order provides that he is to be placed in a half-way house.

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).

For the reasons stated above, the Court concludes that Petitioner's claim regarding the use of his juvenile records does not state a claim cognizable on federal habeas review. Moreover, Petitioner's drug treatment claim does not warrant federal habeas relief under § 2254(d)(1). Reasonable jurists would not find these conclusions to be unreasonable. Consequently, the Court declines to issue a certificate of appealability.

VI. 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

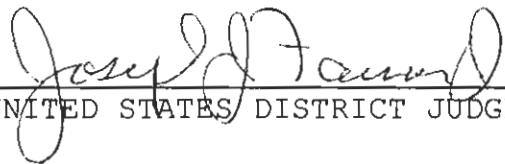
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ORDER

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

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

Dated: April 5, 2005


UNITED STATES DISTRICT JUDGE