



to respectfully amend the relief sought. On 2-17-2023, [Petitioner] went to sentencing on a separate issue. Had the credit been applied as it was, Petitioner would've been home over a year ago. At his recent sentencing he received an additional 4 years Level 5 for a case that was 4 years old. Had the Petitioner been home, working, and staying out of trouble, the outcome of that sentence could have been different.

Wherefore, given the circumstances, Petitioner would like to request, if there are grounds to do so, that this great Court dismiss the case at hand. If no grounds exist to dismiss [] Petitioner's case would request the original sentence on June 25, 2021 be reimposed.

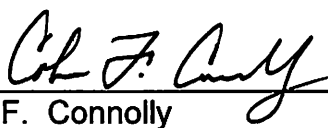
(D.I. 3 at 30) The Court perceives two possible ways of construing the foregoing filing. Petitioner is either asking to amend his current Petition by adding a claim seeking the dismissal of his most recent Delaware conviction and/or sentence imposed on February 17, 2023, or he is asking the Court to dismiss the instant Petition.

A federal district court may summarily dismiss a habeas petition "if it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief." Rule 4, 28 U.S.C. foll. § 2254. A petitioner is not entitled to federal habeas relief unless he has exhausted state remedies for his habeas claims by "fairly presenting" the substance of the claims to the state's highest court, either on direct appeal or in a post-conviction proceeding, and in a procedural manner permitting the state courts to consider them on the merits. See 28 U.S.C. § 2254(b)(1)(A); *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *Lambert v. Blackwell*, 134 F.3d 506, 513 (3d Cir. 1997). Given Petitioner's admission that his postconviction motion is still pending in the

Delaware courts, the Court concludes that Petitioner has not yet exhausted state remedies for his Petition.<sup>1</sup>

Accordingly, the Court will summarily dismiss the instant Petition without prejudice to provide Petitioner with an opportunity to exhaust state remedies.<sup>2</sup> The Court will also decline to issue a certificate of appealability because petitioner has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); 3d Cir. L.A.R. 22.2 (2011); *United States v. Eyer*, 113 F.3d 470 (3d Cir. 1997). A separate Order follows.

Dated: April 27, 2023

  
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Colm F. Connolly  
Chief Judge

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<sup>1</sup>Habeas petitions filed pursuant to 28 U.S.C. § 2254 must be filed within a one-year limitations period. Petitioner is responsible for determining the events that trigger and toll the limitations period.

<sup>2</sup>As previously explained, Petitioner may be attempting to add a claim challenging a conviction and sentence impose in February 2023. Rule 2(e), Rules Governing Section 2254 Case 28 U.S.C. foll. § 2254, provides that a “petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.” “[M]any judges construing the language of Rule 2(e) have determined that when a petitioner seeks relief from different judgments in state court, the petitioner must file separate petitions covering each separate judgment unless judicial economy counsels otherwise.” *Lynch v. Garman*, 2018 WL 5984850, at \*2 (E.D. Pa. Oct. 15, 2018). Thus, if Petitioner returns to this Court intending to challenge both his 2021 and his 2023 convictions, he should file two separate petitions.

