

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RICHARD L. LEWIS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 97-690-GMS
)	
ROBERT SNYDER, Warden, and)	
ATTORNEY GENERAL OF THE STATE)	
OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

After pleading guilty to eight counts of burglary in the second degree, Richard L. Lewis was sentenced to eight years in prison followed by three years of probation. Lewis is presently incarcerated in the Delaware Correctional Center in Smyrna, Delaware. He has filed with the court¹ a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, asserting two separate claims for relief. Because the court finds that Lewis' claims lack merit, the court will deny his petition.

I. BACKGROUND

On July 22, 1993, Richard L. Lewis appeared before the Delaware Superior Court and pleaded guilty to eight counts of burglary in the second degree. The plea agreement, signed by Lewis

¹ This matter was originally assigned to the Honorable Sue L. Robinson, but was reassigned to this court on September 28, 1998.

on July 22, 1993, reads in relevant part:

State will recommend: 8 yrs in addition to the 3 years for parole violation. 4204L. State will not seek habit. offender status, should the Defendant be eligible. Rule 11 credit for time served.

(D.I. 6, Appendix to Appellant's Opening Br., Exh. A.) At the July 22, 1993 plea colloquy and sentencing hearing, the following discussion transpired:

THE COURT: This is pursuant to Rule 11, and the State has committed itself in writing to recommend no more than eight years in addition to the three years you're presently serving for a parole violation. So as long as the Court does not sentence you to anything other than the eight years for these eight burglary second degree counts to be served consecutively to the parole violation, then you're not able to withdraw your guilty plea. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: But if the Court should impose any period of incarceration more than that, i.e. more than the eight years to be served consecutive to the three years for parole violation, then you would be able to withdraw your guilty plea and go to trial. You understand that?

THE DEFENDANT: Yes.

THE COURT: You understand also that the eight years that the Court might impose, if it should follow the State's recommendation, would probably be followed by some period of probation. Do you understand that?

THE DEFENDANT: Yes.

* * *

THE COURT: 4204(l) provides that whenever the Court imposes a period of incarceration at Level Five custody for one or more offenses that totals one year or more, that would apply, then the Court must include as part of its custodial supervision at either Level Four, Three or Two for a period of not less than six months to facilitate the transition of the individual back into society. The six month transition period required by this subsection may, at the discretion of the Court, be in addition to the maximum sentence of imprisonment established by the statute.

I had covered that when I made sure you're aware that the eight year sentence would be followed by a period of probation. . . .

Is that your understanding of the plea agreement?

[DEFENSE COUNSEL]: Yes, it is.

THE COURT: Is that [Defendant's] answer?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about the plea agreement?

THE DEFENDANT: No.

(D.I. 6, State's Motion to Affirm, Exh. A at 3 n.3 and 4 n.4.)² Lewis was then sentenced to eight years in prison followed by three years of probation.

On March 27, 1995, Lewis filed in the Delaware Superior Court a pro se motion to correct his sentence pursuant to Superior Court Criminal Rule 35(a),³ alleging that his sentence exceeded that contemplated by his plea agreement in violation of his constitutional right to due process. The Superior Court found that Lewis understood that the eight-year sentence to which he agreed would be followed by a period of probation, concluded that his sentence did not exceed the terms of his plea agreement, and on June 16, 1995, denied his Rule 35(a) motion. On August 16, 1995, the Delaware Supreme Court dismissed Lewis' appeal as untimely.

² This portion of the colloquy is taken from the Superior Court's Order of June 16, 1995, which the respondents assert is accurate. Because the respondents have not provided the court with a copy of the transcript of the plea colloquy, the court cannot independently confirm the accuracy of the transcript. The court notes that Lewis does not in any way dispute the accuracy of this quotation. In fact, Lewis acknowledges that the Superior Court informed him "that the eight years that the Court might impose, if it should follow the State's recommendation, would probably be followed by some period of probation." (D.I. 2 at 6.) Under these circumstances, the court considers the above-quoted portions to be correct and complete for the purpose of considering Lewis' claims.

³ "Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence." Super. Ct. R. Crim. P., Rule 35(a).

Lewis filed a second Rule 35(a) motion to correct his sentence on October 9, 1996, again arguing that his sentence exceeded that contemplated by his plea agreement in violation of his constitutional due process rights. He further alleged that his counsel was ineffective for failing to object at the plea colloquy and sentencing hearing. On November 26, 1996, the Superior Court denied Lewis' second Rule 35(a) motion for the reasons set forth in the June 16, 1995 order denying his first Rule 35(a) motion. On March 5, 1997, the Delaware Supreme Court affirmed, stating that Lewis' assertion that the Superior Court imposed an illegal sentence in violation of his plea agreement was "clearly without merit." (D.I. 6, Delaware Supreme Court Order, Mar. 5, 1997, at 3.)

Lewis has now filed the current petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the following reasons, the court will deny the petition.

II. STANDARDS OF REVIEW

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). Additionally, pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"):⁴

⁴ Effective April 24, 1996, the AEDPA amended the standards for reviewing state court judgments in habeas petitions filed under 28 U.S.C. § 2254. *Werts v. Vaughn*, 228 F.3d 178, 195 (3d Cir. 2000). Federal courts must apply the AEDPA's amended standards to any habeas petition filed on or after April 24, 1996. *See Lindh v. Murphy*, 521 U.S. 320, 336 (1997); *Werts*, 228 F.3d at 195. Lewis filed the current habeas petition at the earliest on October 15, 1997, the date he signed it. Accordingly, this court applies the AEDPA's amended standards of review to Lewis' petition.

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 with respect to any claim that was adjudicated on the merits in State court proceedings unless the 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 . . .

28 U.S.C. § 2254(d). A federal court may issue a writ of habeas corpus under this provision only if it finds that the state court decision on the merits of a claim either: (1) was contrary to clearly established federal law, or (2) involved an unreasonable application of clearly established federal law. *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

A federal court may grant the writ under the “contrary to” clause only “if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set of materially indistinguishable facts.” *Id.* at 412-13. The court “must first identify the applicable Supreme Court precedent and determine whether it resolves the petitioner’s claim.” *Werts*, 228 F.3d at 197, citing *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 888 (3d Cir. 1999). In order to satisfy the “contrary to” clause, the petitioner must demonstrate “that Supreme Court precedent *requires* the contrary outcome.” *Matteo*, 171 F.3d at 888 (emphasis added).

If the petitioner fails to satisfy the “contrary to” clause, the court must determine whether the state court decision was based on an unreasonable application of Supreme Court precedent. *Id.* Under the “unreasonable application” clause, the court “may grant the writ if the state court identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner’s case.” *Williams*, 529 U.S. at 413. In other words, a federal court should not grant the

petition under this clause “unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified under existing Supreme Court precedent.” *Matteo*, 171 F.3d at 890.

Respecting a state court’s determinations of fact, this court must presume that they are correct. 28 U.S.C. § 2254(e)(1). The petitioner bears the burden of rebutting the presumption of correctness by clear and convincing evidence. *Id.* The presumption of correctness applies to both explicit and implicit findings of fact. *Campbell v. Vaughn*, 209 F.3d 280, 286 (3d Cir. 2000).

III. DISCUSSION

In his habeas petition, Lewis articulates the following claims for relief:

- (1) The state court violated his constitutional right to due process by exceeding the sentence contemplated by his plea agreement.
- (2) The state court violated his constitutional rights to due process and effective assistance of counsel by denying his Rule 35(a) motion for correction of sentence without a hearing and without appointing counsel.

The respondents concede that Lewis’ claims are exhausted and are properly before this court. They argue that his claims lack merit, and that his petition should be denied in its entirety.

A. Claim 1

Lewis’ first claim is that his constitutional right to due process was violated when he was sentenced to an eight-year term of incarceration followed by three years of probation, or in his words, an eleven-year sentence. He argues that under the maximum sentence contemplated by the plea agreement was eight years *including* any term of probation. As noted above, the plea agreement

provides only that the “State will recommend: 8 yrs in addition to the 3 years for parole violation.

4204L. State will not seek habit. offender status, should the Defendant be eligible. Rule 11 credit for time served.” (D.I. 6, Appendix to Appellant’s Opening Br., Exh. A.) Obviously, the plea agreement itself does not specify whether the eight year term included any period of probation.

Regardless of any ambiguity of the plea agreement, the court finds that the Superior Court did not violate Lewis’ right to due process by imposing an eight-year period of incarceration followed by a three-year period of probation. At the plea colloquy and sentencing hearing, on at least two occasions, the Superior Court informed Lewis of its interpretation of the plea agreement, *i.e.*, that the eight years probably would be followed by a period of probation. At least twice Lewis acknowledged that he understood that the recommended eight-year sentence probably would be followed by an additional period of probation. The Superior Court then imposed an eight-year period of incarceration to be followed by a three-year period of probation. Under these circumstances, the court simply cannot agree with Lewis that his plea agreement did not contemplate the sentence imposed.

Moreover, under the AEDPA, this court must afford broad deference to the decisions of the state courts. As explained above, this court must presume that the state courts’ factual determinations are correct unless rebutted by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). This court may not disturb the state courts’ legal conclusions unless they are “contrary to, or involved an unreasonable application of, clearly established Federal law.” 28 U.S.C. § 2254(d)(1). To the extent the state courts found as a matter of fact that the plea agreement contemplated the sentence imposed, the court concludes that Lewis has failed to present any clear and convincing evidence undermining this conclusion. The court is also persuaded that the state courts’ legal conclusions as to this claim are

neither contrary to, nor did they involve an unreasonable application of, any clearly established federal law.

For these reasons, the court denies Lewis' request for habeas relief as to this claim.

B. Claim 2

Lewis' second claim is that the state court violated his constitutional rights to due process and effective assistance of counsel by failing to conduct a hearing and appoint counsel before denying his second Rule 35(a) motion for correction of sentence. The respondents argue that this claim cannot provide a basis for federal habeas relief. The court agrees.

Federal courts are authorized to provide habeas relief where a petitioner is in state custody imposed in violation of the Constitution or the laws or treaties of the United States. 28 U.S.C. § 2254(a); *Hassine v. Zimmerman*, 160 F.3d 941, 954 (3d Cir. 2000). "The federal role in reviewing an application for habeas corpus is limited to evaluating what occurred in the state or federal proceedings that actually led to the petitioner's conviction; what occurred in the petitioner's *collateral* proceedings does not enter into the habeas calculation." *Id.* (emphasis in original).

In the instance case, Lewis was sentenced on July 22, 1993. On October 9, 1996, more than three years later, he filed his second Rule 35(a) motion to correct his sentence. The fact that the Superior Court failed to conduct a hearing or appoint counsel in a collateral proceeding three years later is entirely unrelated to the state proceedings that actually led to the imposition of his sentence following a guilty plea. On habeas review, this court is precluded from evaluating whether the Delaware Superior Court should have conducted a hearing or appointed counsel in his Rule 35(a) collateral proceedings.

For this reason, the court concludes that Lewis' second claim for relief is not cognizable on federal habeas review.

C. Certificate of Appealability

Finally, the court must determine whether a certificate of appealability should issue. *See* Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requires the petitioner to "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, the court is persuaded that reasonable jurists would not find its assessments of Lewis' claims debatable or wrong. Therefore, Lewis has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not issue.

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Lewis' petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED.
2. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated: November 28, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE