

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

RICHARD YASAR SOMERVILLE,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 98-219-GMS
)	
ROBERT SNYDER, Warden, and)	
ATTORNEY GENERAL OF THE STATE)	
OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

After pleading guilty to first degree assault, Richard Yasar Somerville was sentenced to ten years in prison suspended after six years for probation. Somerville 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 four separate claims for relief. For the reasons set forth below, the court concludes that each of Somerville’s claims either lacks merit or is procedurally barred, and will deny the petition and the requested relief.

I. BACKGROUND

In January 1996, Richard Yasar Somerville was charged with one count of first degree assault

¹ This matter was originally assigned to the Honorable Joseph J. Farnan, Jr., but was reassigned to this court on September 28, 1998.

for the beating of his thirteen-month-old son. Following a presentence investigation, Somerville pleaded guilty in the Delaware Superior Court on May 21, 1996. He was sentenced on July 26, 1996, to ten years incarceration to be suspended for probation after six years. Somerville did not appeal to the Delaware Supreme Court.

On August 27, 1996, Somerville filed in the Delaware Superior Court a motion for post-conviction relief under Rule 61 of the Superior Court Rules of Criminal Procedure. In his Rule 61 motion, Somerville raised the following claims: (1) ineffective assistance of counsel; (2) counsel promised a sentence of no more than thirty months; (3) Somerville lacked knowledge of court procedures and did not know whether he could speak after the sentence was imposed; (4) the presentence information was erroneous; (5) the exceptional sentencing factor was unfounded; and (6) the sentencing court failed to consider mitigating factors. (D.I. 22, Motion for Post-Conviction Relief at 3-4.) Somerville's Rule 61 motion was referred to a commissioner for a report and recommendation. On July 17, 1995, upon the report and recommendation of the commissioner, the Delaware Superior Court denied Somerville's Rule 61 motion on the ground that each of his claims was procedurally barred by Rule 61(i)(3).

On appeal, the Delaware Supreme Court affirmed. *Somerville v. State*, 703 A.2d 629 (Del. 1997). The Delaware Supreme Court first noted that Somerville had abandoned each of his claims except for his claim of ineffective assistance of counsel. *Id.* at 631. The Delaware Supreme Court then rejected Somerville's ineffective assistance of counsel claim on the merits and affirmed the Delaware Superior Court's order denying his Rule 61 motion. *Id.* at 633.

Somerville has now filed with the court the current petition for a writ of habeas corpus pursuant

to 28 U.S.C. § 2254. (D.I. 2.) The respondents ask the court to deny the petition on the merits.

II. LEGAL STANDARDS

A. 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). Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”):²

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

² 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. Somerville filed the current habeas petition at the earliest on November 12, 1997, the date he signed it. Accordingly, the AEDPA’s amended standards of review apply to Somerville’s petition.

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 v. Vaughn*, 228 F.3d 178, 197 (3d Cir. 2000), *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 express and implicit findings of fact. *Campbell v. Vaughn*, 209 F.3d 280, 286 (3d Cir. 2000). When the state court did not specifically articulate its factual findings but denied a claim on the merits, federal courts on habeas review generally may “properly assume that the state trier of fact . . . found the facts against the petitioner.” *Weeks v. Snyder*, 219 F.3d 245, 258 (3d Cir. 2000).

B. Exhaustion and Procedural Default

Pursuant to the federal habeas statute:

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). Grounded on principles of comity, exhaustion of state court remedies ensures that state courts have the initial opportunity to review federal constitutional challenges to state convictions. *Werts*, 228 F.3d at 192.

To satisfy exhaustion, “state prisoners must give the 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 v. Boerckel*, 526 U.S. 838, 844-45 (1999). Although a state prisoner is not required to “invoke extraordinary remedies” to satisfy exhaustion, he must fairly present each of his claims to the state courts. *Boerckel*, 526 U.S. at 845, 848. Generally, federal courts will dismiss without prejudice claims that have not been properly presented to the state courts, thus allowing petitioners to exhaust their claims. *Lines v. Larkins*, 208 F.3d 153, 159-60 (3d Cir. 2000).

If a claim has not been fairly presented to the state courts, but state procedural rules preclude a petitioner from seeking further relief in the state courts, the exhaustion requirement is deemed satisfied because further state court review is unavailable. *Id.* at 160. Although technically exhausted, such claims are deemed procedurally defaulted. *Id.* Federal courts may not consider the merits of procedurally faulted claims unless the petitioner demonstrates cause for the default and prejudice

resulting therefrom, or a fundamental miscarriage of justice. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991); *Lines*, 208 F.3d at 160. Federal courts should refrain from finding claims procedurally barred unless state law clearly forecloses state court review of claims which have not previously been presented to a state. *Lines*, 208 F.3d at 163.

In order to demonstrate cause for a procedural default, a petitioner must show that “some objective factor external to the defense impeded counsel’s efforts to comply with the State’s procedural rule.” *Murray v. Carrier*, 477 U.S. 478, 488 (1986). A petitioner may establish cause, for example, by showing that the factual or legal basis for a claim was not reasonably available or that government officials interfered in a manner that made compliance impracticable. *Werts*, 228 F.3d at 193. Additionally, ineffective assistance of counsel constitutes cause, but only if it is an independent constitutional violation. See *Coleman*, 501 U.S. at 755. In addition to cause, a petitioner must establish actual prejudice, which requires him to show “not merely that the errors at . . . trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.” *Murray*, 477 U.S. at 494.

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. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Wenger*, 266 F.3d at 224. The miscarriage of justice exception applies only in extraordinary cases “where a constitutional violation has probably resulted in the conviction of one who is actually innocent.” *Murray*, 477 U.S. at 496. To establish a miscarriage of justice, a petitioner must prove that it is more likely than not that no reasonable juror would have convicted him. *Schlup v. Delo*, 513 U.S. 298, 326 (1995); *Werts*, 228 F.3d at 193.

III. DISCUSSION

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

- (1) Counsel rendered ineffective assistance by advising Somerville that he would be incarcerated for no more than thirty months if he pleaded guilty.
- (2) Somerville's guilty plea was involuntary because it was unlawfully induced by counsel's erroneous advice.
- (3) The sentence imposed exceeded the guidelines without a finding of exceptional factors.
- (4) The sentencing court failed to consider mitigating factors in imposing his sentence.

(D.I. 2 at 5-6.) The respondents first argue that Somerville's claims are exhausted and should be denied as lacking in merit. Alternatively, they argue that his third and fourth claims are procedurally barred from federal habeas review. The court will address each of Somerville's claims in turn.

A. Claim 1

Somerville's first claim is one of ineffective assistance of counsel in violation of the Sixth Amendment. Somerville asserts that counsel advised him that he would receive no more than thirty months of prison time if he pleaded guilty. Despite counsel's advice, Somerville was sentenced to ten years incarceration to be suspended for probation after six years. (D.I. 2 at 5.)

The respondents contend that Somerville properly exhausted this claim by presenting it to the Delaware Supreme Court on appeal from the denial of his Rule 61 motion. They fail to explain, however, why his failure to raise the issue on direct appeal did not result in a procedural default. In Delaware, the failure to raise an issue on direct appeal generally renders a claim procedurally defaulted. *See* Super. Ct. R. Crim. P. 61(i)(3); *Bialach v. State of Delaware*, 773 A.2d 383, 386 (Del. 2001). Indeed, the Delaware Superior Court found each of Somerville's claims, including his ineffective

assistance claim, procedurally barred under Rule 61(i)(3). (D.I. 22, Delaware Superior Court Order, July 15, 1997, at 2.)

Notwithstanding, the court concludes that Somerville's ineffective assistance claim is not procedurally defaulted for two reasons. First, on appeal from the denial of his Rule 61 motion, the Delaware Supreme Court ruled on Somerville's ineffective assistance claim on the merits without invoking the procedural bar of Rule 61(i)(3). *See Somerville*, 703 A.2d at 633. As the last state court rendering a judgment in the case, the Delaware Supreme Court's decision on the merits of Somerville's ineffective assistance claim removed the procedural bar on which the Delaware Superior Court relied. *See Harris v. Reed*, 489 U.S. 255, 263 (1989); *Ylst v. Nunnemaker*, 501 U.S. 797, 801 (1991)(explaining that "[i]f the last state court to be presented with a particular federal claim reaches the merits, it removes any bar to federal-court review that might otherwise have been available"). Additionally, the Delaware Supreme Court has repeatedly stated that claims of ineffective assistance of counsel are properly raised for the first time in a Rule 61 post-conviction motion, not on direct appeal. *See MacDonald v. State*, 778 A.2d 1064, 1071 (Del. 2001); *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990). For these reasons, the court finds that Somerville's failure to file a direct appeal did not result in a procedural default of his ineffective assistance claim.

A review of the merits nonetheless leads to the firm conclusion that Somerville's ineffective assistance of counsel claim cannot provide a basis for habeas relief. Because the Delaware Supreme Court rejected Somerville's claim of ineffective assistance on the merits, he must demonstrate that the Delaware Supreme Court's decision either: (1) was contrary to clearly established federal law, or (2) involved an unreasonable application of clearly established federal law. 28 U.S.C. § 2254(d)(1);

Williams, 529 U.S. at 412. Here, the clearly established federal law is *Hill v. Lockhart*, 474 U.S. 52 (1985). In *Hill*, the United States Supreme Court applied the two-part test of *Strickland v. Washington*, 466 U.S. 668 (1984), to challenges to guilty pleas based on ineffective assistance of counsel. *Hill*, 474 U.S. at 58. Under *Hill*, Somerville must demonstrate: (1) that counsel's performance was deficient, *i.e.*, that counsel's representation fell below an objective standard of reasonableness, and (2) actual prejudice, *i.e.*, that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Id.* at 58-59.

Somerville has fallen short of meeting these standards. In considering Somerville's ineffective assistance of counsel claim, the Delaware Supreme Court wrote:

In this case, the record reflects that Somerville indicated on the Truth-in-Sentencing Guilty Plea Form that he understood that the statutory penalty for Assault in the First Degree was up to ten years in jail. The Truth-in-Sentencing Guilty Plea Form executed by Somerville specifies that the statutory penalty is zero to ten years in jail with a maximum penalty of "10 yrs. jail." During the guilty plea colloquy, Somerville acknowledged to the Superior Court judge that he had: read and understood the Truth-in-Sentencing Guilty Plea Form; discussed the matter fully with his attorney; and, was satisfied with his attorney's representation.

During the guilty plea colloquy, Somerville was advised verbally by the Superior Court judge that the statutory penalty provided for up to ten years of incarceration. At the same time, Somerville acknowledged to the judge that the plea agreement was the entire agreement between himself and the prosecution. Somerville specifically denied that anyone had threatened or forced him to plead guilty or promised him anything to induce his guilty plea. . . .

Somerville, 703 A.2d at 632. Implicit in these findings is that counsel did not promise Somerville a sentence of thirty months or less. The court presumes that these findings, both express and implied, are correct, a presumption that Somerville has failed to rebut by clear and convincing evidence. *See* 28 U.S.C. § 2254(e)(1); *Campbell*, 209 F.3d at 286. Indeed, Somerville does not specifically dispute

these findings and has not offered any evidence to undermine them in any way. In short, these findings remain undisturbed.

The court is persuaded that the Delaware Supreme Court's decision was not contrary to *Hill*. In rejecting Somerville's claim, the Delaware Supreme Court correctly cited the standard announced in *Hill*:

In the context of a guilty plea challenge, *Strickland* requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial.

Somerville, 703 A.2d at 631 (citations omitted). Because the Delaware Superior Court correctly identified and articulated the applicable standard, the state court's decision was not contrary to clearly established federal law.

The court is also persuaded that the Delaware Supreme Court's rejection of Somerville's ineffective assistance of counsel claim did not involve an unreasonable application of *Hill*. As previously stated, *Hill* requires Somerville to demonstrate that: (1) counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. *Hill*, 474 U.S. at 58-59. Respecting counsel's performance, the Delaware Supreme Court rejected Somerville's contention that his attorney promised him a sentence that would not exceed thirty months of incarceration. As set forth above, the Delaware Supreme Court found that Somerville acknowledged that "no promises had been made regarding his sentence," and that "his plea agreement contained the entire agreement." *Somerville*, 703 A.2d at 632. Implicit in these findings is that counsel did not

promise Somerville a sentence of thirty months or less, and thus that counsel's performance was not deficient. Respecting prejudice, the Delaware Supreme Court specifically found that Somerville had failed to "allege that if the State had not agreed to a thirty-month sentence or the judge had rejected a thirty-month sentence, he would not have entered a guilty plea." *Id.* at 633. For these reasons, the Delaware Supreme Court ruled that "Somerville has failed to substantiate his claim of ineffective assistance of counsel by the attorney who represented him during the guilty plea proceeding." *Id.* Plainly, the Delaware Supreme Court's decision did not involve an unreasonable application of *Hill*.

For these reasons, Somerville's ineffective assistance of counsel claim cannot succeed. His request for habeas relief on this basis will be denied.

B. Claim 2

Somerville's second claim is that his guilty plea was involuntary because it was unlawfully induced by counsel's erroneous advice respecting the length of time he would serve. It is well established that where a petitioner was represented by counsel during the plea process and entered a guilty plea upon the erroneous advice of counsel, he must establish that he received ineffective assistance of counsel in violation of the Sixth Amendment. *Hill*, 474 U.S. at 58. For purposes of analysis, this claim is indistinguishable from Claim 1. As explained above, Somerville has failed to demonstrate that he received ineffective assistance of counsel in pleading guilty. Without a showing of ineffective assistance, Somerville cannot establish that his guilty plea was involuntary due to counsel's erroneous advice.

In short, this claim fails to provide a basis for granting habeas relief.

C. Claims 3 and 4

In Claims 3 and 4, Somerville seeks to challenge the state court's calculation of his sentence. In particular, he claims that the sentence imposed exceeded the guidelines without a finding of exceptional factors, and that the sentencing court failed to consider mitigating factors in imposing his sentence. (D.I. 2 at 6.) Somerville failed to present these claims to the Delaware Supreme Court on direct appeal. He presented these claims in his Rule 61 motion, but the Delaware Superior Court did not address, or even mention, these claims in its order denying post-conviction relief. On appeal to the Delaware Supreme Court, Somerville presented only his ineffective assistance of counsel claim. Because Somerville has never presented his sentencing errors to the Delaware Supreme Court, these claims are not exhausted. *See Boerckel*, 526 U.S. at 844-45 (holding that "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process").

Although Somerville did not fairly present these claims to the Delaware Supreme Court, these claims are deemed procedurally defaulted because he did not raise them on direct appeal. Under Delaware law, failure to present an issue on direct appeal renders the issue barred from review in the state courts, unless the movant shows cause and prejudice, or a fundamental miscarriage of justice due to a constitutional violation. *See Super. Ct. R. Crim. P. 61(i)(3), (5); Bialach*, 773 A.2d at 386. Here, Somerville failed to file a direct appeal and, as far as this court can discern, has never offered an explanation for this procedural default. Under these circumstances, the state courts would refuse to entertain Somerville's sentencing challenges in a second Rule 61 motion.

Because Delaware law forecloses further state court review of Somerville's sentencing claims, Claims 3 and 4 are procedurally barred from federal habeas review unless Somerville can demonstrate

either cause for the default and prejudice resulting therefrom, or a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 750; *Werts*, 228 F.3d at 192. Somerville has not provided this court with *any* reason for failing to file a direct appeal,³ nor has he suggested in any way that he is actually innocent.⁴ The court, therefore, concludes that Claims 3 and 4 are procedurally barred from habeas review.

D. 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 has concluded that each of Somerville’s claims either lacks merit or is procedurally barred. The court is persuaded that reasonable jurists would not find its assessments of Somerville’s claims debatable or wrong. Somerville therefore cannot make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not issue.

³ As noted above, ineffective assistance of counsel may constitute cause for a procedural default. *See Coleman*, 501 U.S. at 755. Here, however, Somerville has not alleged that counsel was ineffective by failing to file a direct appeal.

⁴ According to the commissioner’s report and recommendation on Somerville’s Rule 61 motion, Somerville told the police that he struck his son three times in the chest with a closed fist. After the third blow, his son flew two or three feet and hit his head on the living room wall. (D.I. 22, Report and Recommendation, July 15, 1997, at 3.) The commissioner also reported that Somerville “freely admitted his guilt” in several correspondences with the Delaware Superior Court. (*Id.* at 4.)

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Somerville's 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: December 7, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE