

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

DUANE L. ROLLINS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 99-592-GMS
)	
ROBERT SNYDER, Warden, and)	
ATTORNEY GENERAL OF THE STATE)	
OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Duane L. Rollins pleaded guilty in the Delaware Superior Court to possession of cocaine, use of a dwelling for keeping an illegal substance, and possession of drug paraphernalia. The Superior Court sentenced Rollins to six years imprisonment to be suspended after three and one-half years for probation. While incarcerated at the Delaware Correctional Center, Rollins filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ For the reasons set forth below, the court will deny Rollins' petition.

I. BACKGROUND

¹ Based on his notification of a change of address, it appears that Rollins is no longer incarcerated. (D.I. 14.) Because he was incarcerated when he filed his petition, however, he satisfies the "in custody" prerequisite for seeking federal habeas relief. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

In September 1997, the Delaware State Police and the Wilmington Police Department received information from a confidential informant that Duane L. Rollins was distributing cocaine from his home in Wilmington, Delaware. Subsequently, the police conducted four controlled purchases during which the confidential informant purchased cocaine from Rollins at his home. On December 5, 1997, after obtaining a search warrant, the police seized from Rollins' home 4.5 grams of cocaine, which was hidden in a flashlight, and drug paraphernalia. At the time of the search, Rollins, two other adults, and several children were present.

Based on these events, a grand jury in the Delaware Superior Court charged Rollins with possession of cocaine with intent to deliver, use of a dwelling for keeping controlled substances, possession of drug paraphernalia, and four counts of unlawfully dealing with a child. On March 6, 1998, Rollins appeared before the Superior Court and pleaded guilty to possession of cocaine, use of a dwelling for keeping controlled substances, and possession of drug paraphernalia.² The Superior Court (Gebelein, J.) sentenced Rollins that same day to six years in prison to be suspended after three and one-half years for probation. Rollins did not file a direct appeal to the Delaware Supreme Court.

On September 1, 1998, Rollins filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court found that Rollins' claims were not procedurally barred, and denied his Rule 61 motion on the merits. *State v. Rollins*, Cr. A. No. IN97-12-1340R1 (Del. Super. Ct. Apr. 12, 1999)(“*Rollins I*”). The Delaware Supreme Court affirmed for the reasons set forth in the Superior Court's order. *Rollins v. State*, No.

² The prosecution entered a *nolle prosequi* on the remaining charges.

188, 1999, 1999 WL 734672 (Del. Aug. 24, 1999)(“*Rollins II*”).

Rollins has now filed with the court the current petition for a writ of habeas corpus. The respondents ask the court to deny Rollins’ petition on the merits.

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). Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”):³

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). According to the United States Supreme Court, 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

³ 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), *cert. denied*, 121 S. Ct. 1621 (2001). 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. Rollins filed the current habeas petition at the earliest on August 28, 1999, the date he signed it. Accordingly, the AEDPA’s amended standards of review apply to Rollins’ petition.

not grant a writ of habeas corpus merely because it concludes in its independent judgment that the relevant state court decision applied clearly established federal law erroneously or incorrectly.” *Gattis v. Snyder*, ___ F.3d ___, No. 99-9006, 2002 WL 90834, *4 (3d Cir. Jan. 24, 2002).

Specifically, 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), *cert. denied*, 531 U.S. 1084 (2001). 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.), *cert. denied*, 531 U.S. 1003 (2000).

III. DISCUSSION

In his habeas petition, Rollins raises the following claims for relief:⁴

- (1) Defense counsel rendered ineffective assistance by: (a) advising Rollins to plead guilty, even though counsel was provided with a witness who could have testified that Rollins did not own, or even know about, the cocaine seized from his home; and (b) failing to challenge the search warrant.
- (2) Defense counsel obstructed justice by obtaining a plea merely to reduce the Public Defender’s caseload.
- (3) The Superior Court abused its discretion by allowing the Public Defender to obtain a guilty plea without any adversarial testing of the state’s case.
- (4) The Superior Court erred in denying postconviction relief on the ground that the claims were “conclusionary” and without conducting an evidentiary hearing.
- (5) The Delaware Supreme Court’s decision to affirm the denial of postconviction relief was a “continued cover-up.”

(D.I. 1.) Rollins asks the court to conduct an evidentiary hearing on his claims. He also asks the court

⁴ The court has renumbered and reorganized Rollins’ claims to facilitate a thorough and concise analysis.

to strike the respondents' answer and impose sanctions for their failure to provide the court with a copy of the entire state court record in this matter. (D.I. 13.) The respondents ask the court to deny the petition on the merits.

A. Claim 1

Rollins claims that counsel rendered ineffective assistance in violation of the Sixth Amendment in two respects. He first alleges that counsel advised him to plead guilty even though she was provided with the name of a witness who was willing to testify that the cocaine did not belong to Rollins, and that he was not even aware that it was in his house. Rollins also asserts that counsel failed to challenge the validity of the search warrant, which was supported by information provided by the confidential informant. A thorough review of the record confirms that Rollins exhausted these claims by presenting them to both the Superior Court and the Delaware Supreme Court in his Rule 61 proceedings.

Because the state courts rejected Rollins' claims of ineffective assistance on the merits, this court's role is limited to determining whether the state courts' decision either was contrary to, or involved an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *Williams*, 529 U.S. at 412. The clearly established federal law for assessing a claim of ineffective assistance of counsel is the familiar two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984): A petitioner claiming ineffective assistance of counsel must show that (1) counsel's performance was deficient, and (2) counsel's deficient performance prejudiced the defense. *Id.* at 687. Where a petitioner alleges that his decision to plead guilty was due to counsel's ineffective assistance, the prejudice requirement is satisfied only if the petitioner demonstrates "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on

going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

In rejecting Rollins’ claims of ineffective assistance, the Superior Court cited *Strickland* and correctly articulated its two-part test. *Rollins I* at 2-3. Because the Superior Court correctly recited the applicable standard, its decision is not contrary to clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *Williams*, 529 U.S. at 412. Thus, the remaining question is whether the Superior Court unreasonably applied the *Strickland* test to the facts of Rollins’ case. *See Williams*, 529 U.S. at 513.

In rejecting Rollins’ claim of ineffective assistance, the Superior Court wrote:

Because defendant does not present the Court with any evidence that his counsel’s conduct fell below that of reasonable professional standards or that he was prejudiced as a result of his attorney’s conduct, his claim must be denied as conclusory. Indeed, defendant does not provide this court of [sic] specific actions by defense counsel that amounted to prejudice caused by counsel’s disregarding his requests to file pre-trial motions or put forth a witness. As such, counsel’s conduct amounted to allowable strategic decisions and did not fall below the reasonable level of professional assistance that would cause prejudice to the outcome of defendant’s case.

Rollins I at 3-4. The Delaware Supreme Court affirmed for the same reasons. *Rollins II* at **1.

After independently reviewing the complete record in this matter, the court finds that the Superior Court’s application of the *Strickland* standard is reasonable. The court is aware that the Superior Court did not expressly rely on *Hill*’s explication of the prejudice inquiry in the context of guilty pleas. The absence of any citation to *Hill*, however, does not necessarily render the Superior Court’s application of *Strickland* unreasonable. Under *Strickland*, Rollins must establish prejudice, which as explained in *Hill*, requires him to show “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 59.

The court finds that Rollins has failed to meet the *Strickland/Hill* standard. Rollins alleges that

before he pleaded guilty, he provided counsel with the name of a witness who would have testified that the cocaine did not belong to him. Oddly, he does not explain what happened next. He does not allege, for example, that counsel threatened him or informed him that he could not speak at the plea colloquy. He has simply failed to allege any actions by counsel that suggest that he was forced to plead guilty.

Moreover, Rollins has failed to identify specifically the witness to whom he refers. Presumably, this witness is Joseph Lewis, whose affidavit Rollins has submitted to the court but without explanation. (D.I. 13, Affidavit.) If Lewis is the witness to whom Rollins refers, his affidavit does *not* support Rollins' assertion that the witness would have testified that the cocaine did not belong to Rollins. In his affidavit, Lewis attests that at the time the police searched the home, "Duane Rollins did not know that the drugs were in the house nor did he know that I [Lewis] put the drugs inside of the flashlight in the basement." (*Id.*) Significantly, Lewis does *not* attest that the drugs or the drug paraphernalia did not belong to Rollins. At most, the Lewis affidavit suggests that Rollins did not know where the drugs were at the time the police conducted the search of his home. Assuming that Lewis is the witness to whom Rollins refers, the court cannot conclude that his affidavit, without more, gives rise to a reasonable probability that Rollins would not have pleaded guilty.

Respecting Rollins' allegation that counsel failed to challenge the search warrant, the Superior Court did not specifically discuss this claim. Regardless, this claim cannot provide a basis for federal habeas relief. Rollins has failed to provide any facts from which the court could conclude that he was prejudiced in any way by counsel's decision not to challenge the search warrant. In the absence of such allegations, his claim of ineffective assistance based on the search warrant must be denied.

In sum, the court finds that the state courts' rejection of Rollins' claims of ineffective assistance is not contrary to, nor did it involve an unreasonable application of, clearly established federal law. His claims of ineffective assistance of counsel, therefore, do not provide a basis for federal habeas relief.

B. Claims 2 and 3

In his second claim, Rollins alleges that his attorney obstructed justice by obtaining a guilty plea merely to reduce the Public Defender's caseload. In his third claim, Rollins asserts that the Superior Court abused its discretion by allowing the Public Defender to obtain a guilty plea without any adversarial testing of the state's case. These two related claims, for which Rollins has provided absolutely no support, are simply "bald assertions and conclusory allegations" for which habeas relief is unavailable. *See Mayberry v. Petsock*, 821 F.2d 179, 185 (3d Cir. 1987).

C. Claims 4 and 5

In his final two claims, Rollins seeks to challenge the state courts' actions in his Rule 61 postconviction proceedings. As the respondents correctly point out, these claims are not cognizable on federal habeas review.

Federal courts are authorized to provide habeas relief only where a petitioner is in custody imposed in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a); *Hassine v. Zimmerman*, 160 F.3d 941, 954 (3d Cir. 1998). 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." *Hassine*, 160 F.3d at 954 (emphasis in original). Rollins' claims based on the Delaware courts' actions in his Rule 61 proceedings, therefore, are not cognizable

on federal habeas review.

IV. REQUEST FOR AN EVIDENTIARY HEARING AND SANCTIONS

The AEDPA grants the court discretion to conduct an evidentiary hearing on habeas review, but only in limited circumstances. *See* 28 U.S.C. § 2254(e); *Campbell v. Vaughn*, 209 F.3d 280, 286-87 (3d Cir. 2000), *cert. denied*, 531 U.S. 1084 (2001). The court *may*, for example, conduct an evidentiary hearing if the petitioner “has diligently sought to develop the factual basis of a claim for habeas relief, but has been denied the opportunity to do so by the state court.” *Campbell*, 208 F.3d at 287 (quoting *Cardwell v. Greene*, 152 F.3d 331, 337 (4th Cir. 1998)). In such a situation, the failure to develop the factual record is not the petitioner’s fault. *Campbell*, 208 F.3d at 286-87.

In exercising its discretion, the court should focus “on whether a new evidentiary hearing would be meaningful, in that a new hearing would have the potential to advance the petitioner’s claim.” *Id.* at 287. The court properly refuses to conduct an evidentiary hearing where a petitioner fails “‘to forecast any evidence beyond that already contained in the record’ that would help his cause, ‘or otherwise to explain how his claim would be advanced by an evidentiary hearing.’” *Id.* (quoting *Cardwell*, 152 F.3d at 338).

Rollins asks the court to conduct an evidentiary hearing because he was “denied any fair review at any State proceeding.” (D.I. 13 at 2.) He fails, however, to identify any evidence outside the record that would help his cause, or to explain how his claims would be advanced by an evidentiary hearing. For this reason, Rollins’ request for an evidentiary hearing is denied.

Rollins also asks the court to strike the respondents’ answer and to impose sanctions because

they failed to provide the court with a copy of the entire state court record. To supplement the state court record, Rollins has provided the court with a copy of his “Closing Brief” submitted to the Delaware Supreme Court on appeal from the denial of his Rule 61 motion, as well as Lewis’ affidavit. The court will neither impose sanctions nor strike the respondents’ answer.

It is unclear why Rollins’ closing brief was not included in the state court records submitted to the court. Nonetheless, out of fairness to Rollins, the court has reviewed and considered this document in its entirety. Nothing in Rollins’ closing brief alters the court’s analyses or conclusions in any way. Striking the respondents’ answer and imposing sanctions are not warranted.

V. 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 federal habeas relief is unavailable as to each of Rollins’ claims. The court is persuaded that reasonable jurists would not find its conclusions debatable or wrong. Rollins has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

VI. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Rollins' 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 for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).
3. Rollins' request for sanctions [D.I. 13] is DENIED.

IT IS SO ORDERED.

Dated: February 13, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE