

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BOOKER T. MARTIN, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 99-611-JJF
 :
 ROBERT SNYDER, Warden, and :
 ATTORNEY GENERAL OF THE STATE :
 OF DELAWARE, :
 :
 Respondents. :

Booker T. Martin, Smyrna, Delaware.
Pro Se Petitioner.

Elizabeth R. McFarlan, Esquire, Deputy Attorney General,
DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Respondents.

MEMORANDUM OPINION

February 16, 2001
Wilmington, Delaware.

FARNAN, District Judge.

Presently before the Court is a Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (the "Petition") (D.I. 1) filed by Petitioner, Booker T. Martin. For the reasons set forth below, the Petition will be dismissed and the Writ of Habeas Corpus will be denied.

BACKGROUND

On December 17, 1997, a jury in the Delaware Superior Court convicted Petitioner of first degree robbery and possession of a firearm during the commission of a felony. On appeal, the Delaware Supreme Court affirmed the conviction. Martin v. State, No. 139, 1998 (Del. Dec. 18, 1998).

Petitioner has not applied for state postconviction relief.

In seeking federal habeas relief, Petitioner contends that the prosecutor committed plain error by focusing the jury on the defendant's failure to testify in violation of his Fifth Amendment right against self-incrimination. (D.I. 1, at 3). The State has filed an Answer (D.I. 8) to the Petition and the relevant State Court Records (D.I. 10). Accordingly, the Petition is ripe for the Court's review.

DISCUSSION

I. Standard For Relief Under 28 U.S.C. § 2254

The Antiterrorism and Effective Death Penalty Act

("AEDPA"), which amended 28 U.S.C. § 2254, was signed into law on April 24, 1996. Pub. L. No. 104-132, 110 Stat. 1214 (1996). Because Petitioner filed his Petition for federal habeas relief subsequent to the effective date of the Act, the AEDPA is applicable to the Petition. See Lindh v. Murphy, 521 U.S. 320, 336 (1997).

As amended by the AEDPA, 28 U.S.C. § 2254(d) precludes a district court from granting a habeas petition with respect to any claim that was adjudicated on the merits in a State court proceeding, unless the previous 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). In applying this standard, factual determinations made by a state court are presumed to be correct, and the petitioner carries the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

II. The Exhaustion Requirement

Before turning to the merits of the Petition, the Court must determine, as a threshold matter, whether the Petitioner may seek federal habeas review. In order for a state

petitioner to avail himself or herself of federal habeas review, he or she must have exhausted all available state remedies. 28 U.S.C. § 2254(b). Exhaustion is satisfied if a petitioner shows that he or she "fairly presented" each of his or her claims to the Delaware Supreme Court. Bailey v. Snyder, 855 F. Supp. 1392, 1399 (D. Del. 1993), aff'd, 68 F.3d 736 (3d Cir. 1995). If a petitioner has failed to exhaust state remedies, but state remedies are no longer available, the exhaustion requirement is excused. Teague v. Lane, 489 U.S. 288, 298 (1989).

After reviewing the record in this case, the Court concludes that Petitioner has exhausted his state remedies with respect to his claim that the prosecutor committed plain error by focusing the jury on the defendant's failure to testify in violation of his Fifth Amendment right against self-incrimination. Petitioner presented this claim to the Delaware Supreme Court on his direct appeal.

III. Petitioner's Claim

Although exhaustion is satisfied with regard to Petitioner's claim, the Court concludes that Petitioner's claim is procedurally barred under Superior Court Criminal Rule 61(i)(3). Petitioner raised his claim for the first and only time on appeal to the Delaware Supreme Court. Because

Petitioner did not raise his claim in the proceedings leading to the judgment of conviction in the state court, Petitioner's claim would be procedurally barred in a subsequent post-conviction motion. Because Petitioner has procedurally defaulted his claims in the state court, federal habeas review of Petitioner's claims is precluded, unless Petitioner demonstrates cause for his failure to raise the issue in the state court and actual prejudice, or that a miscarriage of justice will result if the Court refuses to hear his claims. See Coleman v. Thompson, 501 U.S. 722, 750-51 (1991).

In order to demonstrate cause for a procedural default, a petitioner must show "some objective factor external to the defense" precluded his compliance with state procedural rules. McClesky v. Zant, 499 U.S. 467, 493 (1991). In reviewing the record, the Court concludes that Petitioner has not alleged and the record does not reveal cause for the procedural default of Petitioner's claims. Because Petitioner has failed to establish cause for his procedural default, the Court need not consider the question of actual prejudice. See Murray v. Carrier, 477 U.S. 527, 533 (1986); Lawrie v. Snyder, 9 F. Supp. 2d 428, 453 (D. Del. 1998).

Moreover, the Court concludes that Petitioner cannot establish that a miscarriage of justice will result if the Court does not consider Petitioner's claims. To establish a

"miscarriage of justice," a petitioner must show "that it is more likely than not that no reasonable juror would have convicted him." Dawson, 988 F. Supp. at 805 (citing Schlup v. Delo, 513 U.S. 298, 326 (1995)). The miscarriage of justice exception applies only in extraordinary cases and is "concerned with actual innocence as compared to legal innocence." Sawyer v. Whitley, 505 U.S. 333, 339 (1992).

In this case, Petitioner has presented no colorable evidence of his actual innocence. Petitioner's claim is based on an alleged legal error, which does not impact on the question of Petitioner's actual innocence. Thus, the Court concludes that Petitioner has not established that a miscarriage of justice will result if the Court does not consider the merits of Petitioner's claims. Accordingly, Petitioner's claim will be dismissed.

CONCLUSION

For the reasons discussed, the Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody (the "Petition") (D.I. 1) filed by Petitioner, Booker T. Martin, will be dismissed and the Writ of Habeas Corpus will be denied.

An appropriate Order will be entered.

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 ROBERT SNYDER, Warden, and :
 ATTORNEY GENERAL OF THE STATE :
 OF DELAWARE, :
 :
 Respondents. :

ORDER

WHEREAS, presently before the Court is Petitioner's
Motion For Voluntary Dismissal (D.I. 13);

NOW THEREFORE, IT IS HEREBY ORDERED this 16 day of
February 2001 that Petitioner's Motion For Voluntary Dismissal
(D.I. 13) is **DENIED**.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BOOKER T. MARTIN,	:
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Petitioner,	:
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ATTORNEY GENERAL OF THE STATE	:
OF DELAWARE,	:
	:
Respondents.	:

AMENDED ORDER

WHEREAS, presently before the Court is Respondents’
Motion To Alter or Amend Judgment (D.I. 19);

WHEREAS, Respondents move to alter or amend the February
16, 2001 Memorandum Opinion and Order of the Court dismissing
the petition for a writ of habeas corpus;

WHEREAS, the Court concluded that Petitioner’s claim was
procedurally barred under Superior Court Criminal Rule
61(i)(3) (D.I. 16 at 3) and analyzed the claim under the cause
and prejudice or miscarriage of justice standard (D.I. 16 at
4)(citing Coleman v. Thompson, 501 U.S. 722, 750-51 (1991));

WHEREAS, the Delaware Supreme Court rejected Petitioner’s

claim under Delaware Supreme Court Rule 8 finding that "the error complained of in this case does not rise to the level of plain error" (Martin v. State, No. 139, 1998 (Del. Dec. 18, 1998));

WHEREAS, Delaware Supreme Court Rule 8 is an independent and adequate state law ground under Wainwright v. Sykes, 433 U.S. 72 (1972), which precludes federal habeas review of Petitioner's claim unless Petitioner can establish cause for his procedural default and resulting prejudice, or that a miscarriage of justice will result if the court refuses to hear Petitioner's claim;

WHEREAS, the Court concludes that the analysis set forth in the February 16, 2001 Memorandum Opinion and Order in this case remains unchanged except that the relevant procedural bar is Delaware Supreme Court Rule 8, rather than Delaware Superior Court Criminal Rule 61;

NOW THEREFORE, IT IS HEREBY ORDERED this ___ day of March 2001 that Respondents' Motion To Alter or Amend Judgment (D.I. 19) is GRANTED.

UNITED STATES DISTRICT JUDGE