

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

RONALD A. WILSON,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 99-697-GMS
)	
THOMAS R. CARPER, Governor, STANLEY)	
TAYLOR, Commissioner, M. JANE BRADY,)	
Attorney General of the State of Delaware, and)	
PAROLE BOARD OF DELAWARE,)	
)	
Respondents.)	

MEMORANDUM AND ORDER

Ronald A. Wilson is an inmate at the Delaware Correctional Center in Smyrna, Delaware. The Delaware Board of Parole has twice denied Wilson’s requests for release to parole supervision. Wilson has filed with the court the current petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the Board of Parole’s denial of parole. For the following reasons, the court concludes that Wilson has failed to exhaust available state court remedies, and will dismiss the petition without prejudice for failure to exhaust.

I. BACKGROUND

In July 1989, Ronald A. Wilson pleaded guilty in the Delaware Superior Court to two counts of unlawful sexual penetration in the second degree. In April 1991, Wilson filed in the Superior Court a postconviction motion to correct his sentence, which the Superior Court denied. *State v. Wilson*,

Crim. A. No. IN-89-05-1397, 1992 WL 52203 (Del. Super. Ct. Feb. 18, 1992). The Delaware Supreme Court affirmed. *Wilson v. State*, No. 116, 1992, 1992 WL 219102 (Del. Aug. 10, 1992).

In November 1995 and May 1999, the Delaware Board of Parole denied Wilson's requests for release to parole supervision. (D.I. 7.) Wilson has now filed the current petition for a writ of habeas corpus, challenging the Board of Parole's denial of his requests for parole. The respondents assert that Wilson has never presented his current claims to the state courts, and ask the court to dismiss his petition for failure to exhaust state court remedies.

II. 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, the requirement of exhaustion of state court remedies ensures that state courts have the initial opportunity to review federal constitutional challenges to state convictions, and preserves the role of state courts in protecting federally guaranteed rights. *Werts v. Vaughn*, 228 F.3d 178, 192 (3d Cir. 2000), *cert. denied*, 121 S. Ct. 1621 (2001).

To satisfy the exhaustion requirement, “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,” 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), *cert. denied*, 531 U.S. 1082 (2001).

While a federal court is prohibited from *granting* habeas relief on an unexhausted claim, a federal court is authorized to *deny* habeas relief on the merits of an unexhausted claim. *See* 28 U.S.C. § 2254(b)(2). A petition containing an unexhausted claim, however, should not be denied on the merits unless “it is perfectly clear that the applicant does not raise even a colorable federal claim.” *Lambert v. Blackwell*, 134 F.3d 506, 515 (3d Cir. 1998)(quoting *Granberry v. Greer*, 481 U.S. 129, 135 (1987)). “If a question exists as to whether the petitioner has stated a colorable federal claim, the district court may not consider the merits of the claim if the petitioner has failed to exhaust state remedies.” *Lambert*, 134 F.3d at 515.

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 considered satisfied. *Lines*, 208 F.3d at 160. Such claims are deemed procedurally defaulted, not unexhausted, because further state court review is unavailable. *Id.* Federal courts should refrain from finding claims procedurally barred unless state law clearly forecloses review of claims which have not previously been presented to a state court. *Id.* at 163. In questionable cases or those involving an intricate analysis of state procedural law, “it is better that the state courts make the determination of whether a claim is procedurally barred.” *Banks v. Horn*, 126 F.3d 206, 213 (3d Cir. 1997).

III. DISCUSSION

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

- (1) In denying Wilson's second request for parole, the Parole Board violated his right to due process by ignoring the criteria it set when it denied his first request for parole.
- (2) The Parole Board violated the Double Jeopardy Clause by relying on the same factors to deny parole that the sentencing court considered in imposing his sentence.

The respondents argue that Wilson has never presented any of these claims to the state courts, and that his habeas petition must be dismissed for failure to exhaust state court remedies. In his petition, Wilson acknowledges that he has not previously presented his current claims to the state courts because "[t]here is no appeal process for the Board of Parole in the State of Delaware." (D.I. 1 at 1.) Thus, he argues, "there is no State remedy available to him." (*Id.* at 2.) Because the parties agree that Wilson has not presented his current claims to the state courts, the only remaining question is whether any state court remedies are available to Wilson. If so, the court must dismiss Wilson's petition without prejudice for failure to exhaust.

According to the respondents, Wilson may raise his current claims to the state courts by means of a petition for a writ of mandamus. For this proposition they cite *Bradley v. Delaware Parole Board*, 460 A.2d 532 (Del. 1983). In *Bradley*, the Delaware Parole Board conducted a hearing to determine if James Bradley was eligible for parole. *Id.* at 533. At the time of the hearing, Bradley was in custody in a federal penitentiary in Pennsylvania and did not receive notice of the hearing. *Id.* In Bradley's absence, the Parole Board denied his request for parole. *Id.* Bradley challenged the Parole Board's decision by filing in the Superior Court a petition for a writ of mandamus, arguing that the Parole Board failed to follow its statute and regulations. *Id.* at 534. The Superior Court denied

Bradley's petition, and the Delaware Supreme Court affirmed. *Id.* at 534-35.

Certainly *Bradley* stands for the proposition that the Superior Court will entertain a petition for a writ of mandamus challenging a decision of the Board of Parole to deny parole. It is clear from Wilson's habeas petition that he seeks to raise such a challenge. For this reason, the court finds that there is a state remedy available to Wilson, one which he must exhaust before seeking federal habeas relief.

In sum, the court concludes that Wilson has failed to exhaust available state court remedies. For this reason, his habeas petition will be dismissed without prejudice.

IV. 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 Wilson's habeas petition must be dismissed for failure to exhaust state court remedies. The court is persuaded that reasonable jurists would not find its assessment debatable or wrong. Wilson has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Wilson's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is
DISMISSED WITHOUT PREJUDICE for failure to exhaust state court remedies.
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: January 31st, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE