

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES G. BROWN a/k/a	:
EDWARD G. WILLIAMS,	:
	:
Petitioner,	:
	:
v.	: Civil Action No. 99-730-JJF
	:
ROBERT SNYDER, Warden, and	:
ATTORNEY GENERAL OF THE	:
STATE OF DELAWARE,	:
	:
Respondents.	:

James G. Brown a/k/a Edward G. Williams, Wilmington, Delaware.
Pro Se Petitioner.

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

MEMORANDUM OPINION

March 9, 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. 2) filed by Petitioner, James G. Brown a/k/a Edward G. Williams. For the reasons set forth below, the Petition will be dismissed and the Writ of Habeas Corpus will be denied.

BACKGROUND

In late March 1998, Petitioner was tried before a Delaware Superior Court jury on charges of attempted murder, two counts of assault, two counts of possessing a firearm during the commission of a felony, cocaine trafficking, possession of a controlled substance with intent to deliver, carrying a concealed deadly weapon and resisting arrest. At trial, the State presented evidence that Saladine Fitzgerald, Taryron Burris and Martell Black drove to East 23rd Street in Wilmington from Newark, Delaware on the morning of May 17, 1997. Appendix to State's Answering Brief at B1-2, B12-13, B23, Brown v. State, No. 242, 1998 (Del. Mar. 15, 1999). After parking the car, Saladine Fitzgerald began talking to Kevin Britt regarding money that Britt owed Fitzgerald. Id. at B14-15. During the discussion, Petitioner, a friend of Britt, entered the conversation and eventually displayed a

handgun. Id. at B6. Fitzgerald removed himself from the group and entered his mother's house at the end of the block. Id. at B16. Shortly after, Fitzgerald's brother Yusuf came out of the house and a new argument began between Petitioner and the Fitzgerald brothers. Id. at B7, B24.

The State's witnesses testified that they had seen an argument in the street. Id. at B30, B35. While the witnesses presented conflicting testimony regarding the number of shots fired, all were certain that they had heard gunfire and saw only one gun used. Id. at B32; Appendix to Appellant's Opening Brief at A9, A26, Brown v. State, No. 242, 1998 (Del. Mar. 15, 1999). Taryron Burris testified that he watched as Petitioner shot Saladine Fitzgerald in the left eye and his brother, Yusuf, in the arm. Appendix to State's Answering Brief at B4-5. Petitioner then fled the scene of the crime.

Petitioner was found in the vicinity of the crime scene and was arrested following a brief struggle. Id. at B44. A bounty hunter arrived and assisted the officers in subduing Petitioner. Id. at B43. When Petitioner was searched, the police recovered a .22 caliber revolver, thirty-nine bags of crack cocaine and \$307 in cash from the pockets and lining of Petitioner's coat. Appendix to Appellant's Opening Brief at A18-21. Petitioner was identified as the shooter by both

Saladine and Yusuf Fitzgerald at police lineups later in the day. Appendix to State's Answering Brief at B51-55.

At trial, Petitioner testified that he had been unarmed when the Fitzgerald brothers confronted him in the street and that Yusuf Fitzgerald was the individual who produced the weapon. Appendix to Appellant's Opening Brief at A33.

Petitioner claimed that he was attempting to wrestle the weapon away from Yusuf Fitzgerald when it was fired into Saladine Fitzgerald's eye. Id. at A33-34. According to Petitioner, the fight continued and the gun was fired a second time, hitting Yusuf in the arm. Id.

Following deliberations, the jury found Petitioner not guilty on the charge of attempted murder for the shooting of Saladine Fitzgerald. Appendix to State's Answering Brief at B73. Petitioner was found guilty of the lesser included offenses of assault in the first degree, assault in the second degree, two counts of using a deadly weapon in commission of a felony, cocaine possession, intent to distribute cocaine, carrying a concealed deadly weapon and resisting arrest. Id. at B73-74.

Petitioner appealed his conviction to the Delaware Supreme Court alleging: 1) there was insufficient evidence presented at trial for a rational trier of fact to find

Petitioner guilty of first and second degree assault; 2) that if the underlying felonies cannot be legally supported, then the two counts of using a deadly weapon in the commission of a felony cannot be supported; and 3) that there was plain error when the Superior Court judge failed to declare a mistrial after the jury foreperson expressed concern over delivering the jury's verdict. Appellant's Opening Brief at 3, Brown v. State, No. 242, 1998 (Del. Mar. 15, 1999). The Delaware Supreme Court affirmed Petitioner's conviction after finding sufficient evidence to support the jury's finding that Petitioner intentionally shot Saladine and Yusuf Fitzgerald. Brown v. State, No. 242, 1998 at 2 (Del. Mar. 15, 1999). The court also noted that Petitioner's jury impartiality claim was procedurally barred because Petitioner failed to raise a contemporaneous objection to the jury foreperson's statement that she was reluctant to deliver the jury verdict. Brown, No. 242, 1998, at 2. In seeking federal habeas relief in this Court, Petitioner raises the same claims he presented to the Delaware Supreme Court.

DISCUSSION

I. Evidentiary Hearing

Petitioner has filed a Motion for an Evidentiary Hearing requesting the Court to conduct an evidentiary hearing on his

claim that there was insufficient evidence to convict him of assault and related weapons charges. (D.I. 25 at 3). The standard for determining whether an evidentiary hearing is warranted is set forth in 28 U.S.C. § 2254(e)(2).¹ In the instant case, Petitioner has not alleged the existence of a new rule of constitutional law or any new facts that would justify his request for an evidentiary hearing. Petitioner provides no reason why an evidentiary hearing is needed on his claim or what evidence a hearing would develop. Because Petitioner has failed to make the requisite showing under § 2254(e)(2), the Court will deny Petitioner's request for an evidentiary hearing.

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

The Antiterrorism and Effective Death Penalty Act

¹ Section 2254(e)(2) provides:

If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

- (A) the claim relies on--
 - (I) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
 - (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
- (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense.

("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). The AEDPA is applicable to this Petition because Petitioner filed for federal habeas relief subsequent to the effective date of the Act. 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. A district court may grant habeas relief if the petitioner can show that the state court's adjudication of the claim either (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).

III. The Exhaustion Requirement

Before turning to the merits of the Petition, the Court must determine, as a threshold matter, whether 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 the state remedies are no longer available, the exhaustion requirement is excused. Teague v. Lane, 489 U.S. 288, 298 (1989).

In this case, Petitioner has exhausted his state remedies with respect to the claims raised in the Petition because he presented those claims to the Delaware Supreme Court on direct appeal. Having concluded that the exhaustion requirement is satisfied, the Court will proceed to the merits of Petitioner's claim.

IV. Petitioner's Claims

A. Insufficient Evidence

In reviewing a claim that the evidence was insufficient to warrant a conviction, the Court must view the evidence in

the light most favorable to the prosecution and inquire as to whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979); Moore v. Deputy Comm'rs of the State Correctional Inst., 946 F.2d 236, 243 (3d Cir. 1991); Pitts v. Redman, 776 F. Supp. 907, 923 (D. Del. 1991), aff'd, 970 F.2d 899 (3d. Cir. 1992)). Accordingly, the question is not whether the Court is convinced that the evidence established guilt beyond a reasonable doubt, but whether rational jurors could have found the elements of the crime beyond a reasonable doubt. Moore, 946 F.2d at 243; Roehler v. Borg, 945 F.2d 303, 306 (9th Cir. 1991). Because the jury weighs the evidence, the court must defer to the jury's resolution of conflicts in the evidence. Moore, 946 F.2d at 243.

In reviewing Petitioner's claim that the evidence was insufficient to support his conviction, the Delaware Supreme Court concluded that "ample evidence" existed to sustain Petitioner's conviction. The court noted that the handgun was recovered from Petitioner's person as he fled the scene of the crime. Thus, the Delaware Supreme Court concluded that sufficient evidence existed for a rational trier of fact to convict Petitioner.

Under 28 U.S.C. § 2254, the Court must presume that factual determinations made by a state court are correct. Petitioner has not provided any evidence to overcome this presumption. Further, upon reviewing the decision of the Delaware Supreme Court, the Court concludes that the state court decision involved the reasonable application of the principles established by the Supreme Court in Jackson v. Virginia, 443 U.S. 307 (1979), for sufficiency of evidence claims. The state court examined the evidence presented at trial and concluded that it was sufficient for a rational trier of fact to convict Petitioner. Because the Court concludes that the state court's decision was not "contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States" and was not unreasonable in light of the evidence, the Court will dismiss Petitioner's claim that insufficient evidence existed to warrant his conviction. In addition, the Court will dismiss the claim that the related weapons charges cannot be legally supported.

B. Impartial Jury Claim

With regard to Petitioner's claim that he was denied his Sixth Amendment right to an impartial jury, the Court concludes that Petitioner's claim is procedurally barred under

Superior Court Criminal Rule 61(i)(3).² Because Petitioner did not raise his claims 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 claim 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).

1. Cause

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 cause for his procedural default. Because Petitioner is unable to show cause why his claim is not procedurally

² Delaware Superior Court Criminal Rule 61(i)(3) states:
(3) Procedural Bar. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows
(A) Cause for relief from the procedural default and
(B) Prejudice from violation of the movant's rights.

defaulted, the Court need not consider whether Petitioner was actually prejudiced by the jury foreperson's actions. See Murray v. Carrier, 477 U.S. 527, 533 (1986); Lawrie v. Snyder, 9 F. Supp. 2d 428, 453 (D. Del. 1998).

2. Miscarriage of Justice

The Court further concludes that Petitioner cannot establish that a miscarriage of justice will result if the Court does not consider Petitioner's claim that the jury foreperson acted improperly. 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 v. Snyder, 988 F. Supp. 783, 805 (D. Del. 1997) (citing Schlup v. Delo, 513 U.S. 333, 339 (1995)). When analyzing a petitioner's claim under the miscarriage of justice exception, the Court must determine whether there is actual innocence on the part of the petitioner as compared to legal innocence. See Sawyer v. Whitley, 505 U.S. 333, 339 (1992).

In the present case, Petitioner has not presented evidence that would lead to a colorable assertion of actual innocence. The jury foreperson's concern over delivering the verdict is a legal issue and does not impact the question of Petitioner's actual innocence. Thus, the Court concludes that Petitioner has failed to establish that a miscarriage of

justice will result if the Court does not consider the merits of Petitioner's claims. Accordingly, Petitioner's claim, that he was denied an impartial jury because of the jury foreperson's concern over delivering the verdict, will be dismissed.

CONCLUSION

For the reasons discussed, Petitioner's Motion For An Evidentiary Hearing will be denied. Additionally, the Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By A Person In State Custody filed by Petitioner, James G. Brown a/k/a Edward G. Williams, will be dismissed and the Writ of Habeas Corpus will be denied.

An appropriate Order will be entered.