

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NABIL KADDAH,	:	
Petitioner,	:	
	:	
v.	:	PRISONER
	:	Case No. 3:00 CV 1642 (CFD)
	:	
MARK STRANGE,	:	
Respondent	:	

RULING AND ORDER

The petitioner is currently confined at the State of Connecticut MacDougall Correctional Institution. The petitioner brings this action pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitioner filed an amended petition for writ of habeas corpus on October 30, 2000.

In November 1998, a jury in the Connecticut Superior Court found the petitioner guilty of murder in violation of Connecticut General Statutes § 53a-54a, attempted murder in violation of Connecticut General Statutes §§ 53a-49 and 53a-54a, and unlawful restraint in the first degree in violation of Connecticut General Statutes § 53a-95(a). The state trial court sentenced the petitioner to a total effective term of imprisonment of seventy-five years. On September 7, 1999, the Connecticut Supreme Court affirmed the judgment of conviction. See State v. Kaddah, 250 Conn. 563, 736 A.2d 902 (1999).

The petitioner sets forth two grounds in support of his amended petition here. In the first ground, the petitioner claims he was denied the right to a fair trial because he did not understand the nature of his defense.¹ In the second ground, the petitioner states that he was denied a right to a fair trial because his attorney did not give him the opportunity to testify.

¹His defense was “mental disease or defect” and “extreme emotional disturbance.” See 250 Conn. at 564.

A prerequisite to habeas relief under § 2254 is the exhaustion of all available state remedies. See 28 U.S.C. § 2254(b)(1)(A); O’Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Rose v. Lundy, 455 U.S. 509, 510 (1982); Daye v. Attorney Gen., 696 F.2d 186, 190 (2d Cir.), cert. denied, 464 U.S. 1048 (1982). The exhaustion requirement is not jurisdictional; rather, it is a matter of federal-state comity. See Wilwording v. Swenson, 404 U.S. 249, 250 (1971) (per curiam). The exhaustion doctrine is designed not to frustrate relief in the federal courts, but rather to give the state court an opportunity to correct any errors which may have crept into the state criminal process. See id. Ordinarily, the exhaustion requirement has been satisfied if the federal issue has been properly and fairly presented to the highest state court either by collateral attack or direct appeal. See O’Sullivan, 526 U.S. at 843 (citing Brown v. Allen, 344 U.S. 443, 447 (1953)). “[T]he exhaustion requirement mandates that federal claims be presented to the highest court of the pertinent state before a federal court may consider the petition.” Pesina v. Johnson, 913 F.2d 53, 54 (2d Cir. 1990).

The U.S. Court of Appeals for the Second Circuit requires the district court to conduct a two-part inquiry. First, the petitioner must have raised before an appropriate state court any claim that he asserts in a federal habeas petition. Second, he must “utilize[] all available mechanisms to secure appellate review of the denial of that claim.” Lloyd v. Walker, 771 F. Supp. 570, 573 (E.D.N.Y. 1991) (citing Wilson v. Harris, 595 F.2d 101, 102 (2d Cir. 1979)).

It is evident from the petition here and from the opinion of the Connecticut Supreme Court that neither of the two grounds raised here were raised by the petitioner on direct appeal of

his conviction or in a state habeas petition.² Because the petitioner has not demonstrated that he has exhausted his state court remedies with respect to either ground set forth in the amended petition, the amended petition is dismissed.

The Court notes that under the 1996 amendments to 28 U.S.C. § 2254(b), the district court now has the discretion to deny unexhausted petitions on the merits or dismiss the petition without prejudice to allow exhaustion. See 28 U.S.C. § 2254(b)(2). Here, the Court declines to exercise its discretion to hear and deny the petitioner's unexhausted claims. See 28 U.S.C. 2254(b)(2) (court has discretion to deny on the merits habeas petitions containing unexhausted claims); Cuadrado v. Stinson, 992 F. Supp. 685, 687 (S.D.N.Y. 1998) (Under the AEDPA, “it is still the best policy to ‘allow[] the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights’ ”) (quoting Rose, 455 U.S. at 513); Duarte v. Hershberger, 947 F. Supp. 146, 150 (D.N.J. 1996) (“By refusing to exercise the discretion provided under [2254(b)], this Court endorses the rationale of the ‘total exhaustion rule’ and continues to furnish state appellate courts the initial opportunity to correct trial court decisions.”); Hernandez v. Lord, No. 00 Civ. 2306 (AJP), 2000 WL 1010975 at *5 (S.D.N.Y. July 5, 2000) (where petitioner’s “only viable claim—her ineffective assistance of trial counsel claim—has not been addressed by the state courts and the record on it can benefit from further development . . . the Court believes it appropriate to decline to exercise its discretion to decide the . . . claim on the merits”).

²In the amended petition, the petitioner states that he has not filed any post-conviction motions or petitions.

Conclusion

The amended petition for a writ of habeas corpus [Document #6] is DISMISSED without prejudice to the filing of a second petition after the petitioner has fully exhausted his available state court remedies. The Clerk is directed to enter judgment and close this case.

The Supreme Court has recently held that,

[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack, 120 S. Ct. at 1604. In addition, the Court stated that, [w]here a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Id. This Court concludes that a plain procedural bar is present here; no reasonable jurist could conclude that the petitioner has exhausted his state court remedies with regard to the grounds for relief or that the petitioner should be permitted to proceed further. Accordingly, a certificate of appealability will not issue.

SO ORDERED this 18th day of January 2001, at Hartford, Connecticut.

/s/
Christopher F. Droney
United States District Judge