

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CLAUDIOUS W. CHANNER,	:	
Petitioner,	:	
	:	
v.	:	PRISONER
	:	Case No. 3:99 CV 2564 (CFD)
	:	
WARDEN LESLIE BROOKS,	:	
Respondent	:	

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, currently an inmate at the State of Connecticut Osborn Correctional Institution, brings this amended petition pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. For the reasons set forth below, the amended petition for a writ of habeas corpus is denied.

I. Background

On January 9, 1990, in the United States District Court for the District of Connecticut, the petitioner pled guilty to a charge of using a firearm in connection with a drug trafficking crime in violation of 18 U.S.C. § 924(c).¹ The petitioner was subsequently sentenced to a five year term of imprisonment.

On February 21, 1991, the petitioner was sentenced in the Superior Court for the State of Connecticut to a term of imprisonment of twenty years, to be served consecutively to his federal sentence, following his conviction on November 29, 1990, for the state offenses of robbery in the

¹As indicated by the excerpt of the transcript of the petitioner's guilty plea proceeding, which is attached to his habeas corpus petition, the court informed the petitioner that his federal guilty plea would not necessarily resolve the state charges pending against him, which are discussed in the text, infra.

first degree² and conspiracy to commit robbery in the first degree.³ See State v. Channer, 612 A.2d 95, 97 (Conn. App. Ct. 1992); Channer v. Warden, No. CV 91 1362 S, 1996 WL 88521 at *1 (Conn. Super. Ct. Feb. 8, 1996). On June 17, 1998, the United States District Court vacated the petitioner's January 1990 federal conviction on the basis of Bailey v. United States, 516 U.S. 137 (1995).⁴ See Channer v. United States, Crim. No. 2:89 CR 91 (PCD); Civil No. 3:96 CV 1863 (PCD) (order vacating conviction [Document #51]). The petitioner is still currently serving his twenty year state sentence.

On December 29, 2000, the petitioner filed a petition for writ of habeas corpus in this court, which he amended on March 20, 2000 [Document #4]. In his original and amended petitions, the petitioner claims that he has asked state officials to credit his state sentence with the time he served on his five year federal sentence, from November 9, 1989 until March 23, 1994. He alleges that the respondent has refused to credit this time toward his state sentence. In his amended petition the petitioner also appears to contend that he should not have been turned over to state authorities after the completion of his federal sentence in March 1994, because the State of Connecticut had “abandoned” its jurisdiction over him on January 9, 1990, when he pled guilty in federal court. Thus, he claims that he is being illegally confined in a state prison facility pursuant to the conviction and twenty year sentence for robbery and conspiracy to commit robbery.

²Conn. Gen. Stat. § 53a-134(a)(4).

³Conn. Gen. Stat. §§ 53a-48(a), 53a-134(a)(4).

⁴At the time of the U.S. District Court's decision, the petitioner had finished serving his five year federal sentence.

II. Habeas Corpus Relief for State Prisoners

As indicated, the petitioner brings this action pursuant to 28 U.S.C. § 2241. A federal district court has jurisdiction to entertain a petition for a writ of habeas corpus by any prisoner “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). While §2241 gives federal courts the general authority to issue writs of habeas corpus, § 18 U.S.C. §2254 specifically authorizes a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court.” 28 U.S.C. § 2254(a). See generally United States ex rel. Hoover v. Franzen, 669 F.2d 433, 441-42 (7th Cir. 1982). A petition for a writ of habeas corpus that challenges custody pursuant to a state conviction, therefore, should be brought pursuant to § 2254. See Braden v. 30th Judicial Circuit Court of Ky., 410 U.S. 484, 488 (1973); Abdul-Hakeem v. Koehler, 910 F.2d 66, 74 (2d Cir. 1990) (Lumbard, J., dissenting) (inmate in federal custody should file petition pursuant to section 2241 while inmate in state custody would file petition pursuant to section 2254); Roba v. United States, 604 F.2d 215, 219 (2d Cir. 1979) (inmate in federal custody may obtain habeas corpus relief under section 2241 while inmate in state custody may present similar claims pursuant to section 2254). Accordingly, because the petitioner in the present action is in state custody, the federal sentence has been served, and the federal conviction vacated, the Court construes this petition as a request for habeas corpus relief under 28 U.S.C. § 2254.

III. Exhaustion Requirement

In order to obtain habeas corpus relief under § 2254, the petitioner must first exhaust all available state remedies. See 28 U.S.C. § 2254(b); Rose v. Lundy, 455 U.S. 509, 510 (1982); Daye v. Attorney General, 696 F.2d 186, 190 (2d Cir. 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). It is not designed 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. 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 Daye, 696 F.2d at 190.

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)). A petitioner must present his federal constitutional claims to the highest state court before a federal court may consider the merits of the claims. See Grey v. Hoke, 932 F.2d 117, 119 (2d Cir. 1991). Furthermore, if the petitioner fails to obtain direct review of a claim, he can satisfy the exhaustion requirement by “utilizing available state remedies for collateral attack on his conviction.” Lloyd, 771 F. Supp. at 573 (quoting Klein v. Harris, 667 F.2d 274, 282 (2d Cir. 1981), overruled on other grounds by Daye, 696 F.2d at 186). For example, a petitioner may attack his conviction collaterally by filing a habeas corpus petition in state court. See Finetti v. Harris; 609 F.2d 594, 597-98 (2d Cir. 1979); Brown v. Wilmot, 572 F.2d 404, 406 (2d Cir. 1978) (per curiam). “If [a petitioner files a state habeas corpus petition or otherwise utilizes all available state remedies to attack his sentence collaterally], and relief is denied, and he thereupon unsuccessfully employs all the state appellate procedures available for review of such denial, the petitioner has satisfied the exhaustion

requirement.’ ” Lloyd, 771 F. Supp. at 573.

The petitioner claims that he has asked the defendant to credit his state sentence with the time he served on his federal sentence, but he “keeps on spinning his wheel.” The petitioner also states that the defendant has referred him to numerous state agencies, but he has still not been credited with the time served pursuant to his federal sentence. The Court notes that letters attached to the petitioner’s original habeas petition indicate that the petitioner has also contacted the Connecticut Ombudsman’s Office and the State’s Attorney for the Judicial District of Hartford concerning his request for incarceration credit. The petitioner, however, does not allege that he has raised either the claim regarding incarceration credit or the claim that he is illegally confined in a state prison facility in a state habeas petition or other state proceeding.⁵ Thus, the petitioner has not demonstrated that he has exhausted his state court remedies with respect to any issue raised in either the original or the amended petition here. See Brown, 572 F.2d at 406 (“[E]xhaustion requires a state prisoner to have commenced a state habeas corpus proceeding for the purpose of raising the same constitutional challenges . . . as he seeks to present in his federal habeas corpus proceeding.”). The possibility that the petitioner may still obtain state review of his claims precludes immediate federal review. See 28 U.S.C. § 2254(b); Rose, 455 U.S. at 510; Daye, 696 F.2d at 190. The efforts the petitioner has made with the Defendant and the State’s Attorney are not sufficient to satisfy the exhaustion requirement.

⁵There is a reference to a pending habeas petition in a November 10, 1999 letter from the State’s Attorney, which is attached to the petitioner’s federal habeas petition. It appears that the reference is to the instant federal habeas petition rather than a state one that has been concluded and that concerns the issues raised here.

IV. Conclusion

Accordingly, the petition for a writ of habeas corpus [Document #2] and the amended petition for writ of habeas corpus [Document #4] are DENIED without prejudice. The petitioner may file a federal habeas corpus petition after he has exhausted his state remedies, including any state habeas corpus relief available to him. The Court determines that the petition presents no question of substance for appellate review, and that the petitioner has failed to make a “substantial showing” of denial of a federal right. See Barefoot v. Estelle, 463 U.S. 880, 893 (1983); Rodriguez v. Scully, 905 F.2d 24 (2d Cir. 1990). Thus, a certificate of appealability will not issue. The Clerk is directed to close this case.

SO ORDERED this 23rd day of January 2001, at Hartford, Connecticut.

/s/
Christopher F. Droney
United States District Judge