

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CARTHANIEL BALDWIN	:	
	:	PRISONER
v.	:	Case No. 3:00CV307 (CFD)
	:	
WARDEN	:	

RULING AND ORDER

Pending is the respondent’s Motion to Dismiss Petition for Writ of Habeas Corpus [Doc. # 6] filed pursuant to 28 U.S.C. § 2254. For the reasons that follow, the motion is GRANTED.

Background

On February 27, 1990, the petitioner pled guilty in Connecticut Superior Court under the Alford doctrine to a charge of possession of narcotics with intent to sell. He was sentenced to a term of imprisonment of eight years, which was suspended after four years. The petitioner did not file a direct appeal of this conviction.

In 1991, the petitioner was convicted of other non-related drug offenses. Based upon the 1990 conviction, he was also convicted of being a subsequent offender under Conn. Gen. Stat. § 21a-277(a). He was sentenced to a term of imprisonment of forty-four years, which was later reduced to thirty years. The 1991 conviction was affirmed on direct appeal. See State v. Baldwin, 618 A.2d 513 (Conn. 1993).

The petitioner challenged the 1991 conviction in a habeas corpus petition filed in state Superior Court on February 3, 1993. In the state habeas action, the petitioner alleged that he had been afforded ineffective assistance of trial and appellate counsel and claimed that he was improperly convicted as a subsequent offender because the 1990 guilty plea was entered with the

understanding that the conviction would not be used to enhance any sentence he subsequently received. The petition was denied after a hearing. See Baldwin v. Warden, No. CV 930001625S, 1997 WL 297702 (Conn. Super. Ct. May 23, 1997) (Resp't's Mem. App. A). The Superior Court which decided the habeas petition also denied Baldwin's petition for certification to appeal its judgment, a decision which was affirmed by the Connecticut Appellate Court.¹ See Baldwin v. Commissioner of Correction, 727 A.2d 816 (Conn. App. Ct. 1999) (Resp't's Mem. App. B).

In October 1994, the petitioner filed a second habeas corpus petition in state Superior Court. In the second petition, he asserted the following: (1) he was not represented by counsel at the time of his 1990 Alford plea and conviction; (2) he was denied his right to a speedy trial regarding the 1991 conviction, (3) there was no factual basis for the 1990 plea, and (4) at the 1990 plea proceeding, he was informed that it could not be used for a subsequent sentence enhancement. Appointed counsel filed an Anders brief, was permitted to withdraw, and the petition was denied.² See Baldwin v. Barbieri, No. CV94-0366524 (Conn. Super. Ct. filed Dec. 22, 1995) (Resp't's Mem. App. C). There is no record indicating that decision was appealed.

In 1997, the petitioner filed a third state habeas corpus petition challenging the effectiveness of counsel appointed to represent him on his first state habeas petition. This petition remains pending and is not relevant to the issues in the federal habeas petition.

¹Baldwin also petitioned for certification to appeal the judgment of the habeas court from the Connecticut Supreme Court, pursuant to Conn. Gen. Stat. § 52-470(b), but his petition was denied by Justice Berdon.

²In its memorandum of decision, the court apparently overlooked a typographical error, which, at two places referred to the plea proceeding as having occurred on February 27, 1991, when it occurred on February 27, 1990. See Baldwin v. Barbieri, No. CV94-0366524 at 3.

In October 1998, the petitioner filed a fourth state habeas corpus petition alleging ineffective assistance of counsel in the second state habeas proceeding, erroneous application of the law concerning his right to a speedy trial, and the violation of the 1990 plea agreement. (See Resp't's Mem. App. E.) The fourth state habeas petition was also denied. See Baldwin v. Warden, No. CV98-0418443-S (Conn. Super. Ct. filed Nov. 16, 1999) (Resp't's Mem. App. F). The petitioner was denied certification to appeal the denial of the habeas petition to the Connecticut Appellate Court. (See Resp't's Mem. App. D.)

On February 16, 2000, the petitioner filed the instant federal habeas corpus petition under 28 U.S.C. § 2254, apparently challenging his 1990 state conviction on three grounds: (1) the guilty plea was not voluntary because the plea agreement was subsequently violated; (2) he was afforded ineffective assistance of counsel because (a) appointed counsel moved to withdraw from representing him "thereby leaving me without counselor for mental examination and competency hearing" and (b) his lawyer withdrew because he requested a jury trial; and (3) he was afforded ineffective assistance of counsel in the state habeas proceedings. The respondent has moved to dismiss the petition on the ground that the petitioner has failed to exhaust his state court remedies.

Discussion

A prerequisite to habeas relief under section 2254 is the exhaustion of all available state remedies. See O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Rose v. Lundy, 455 U.S. 509, 510 (1982); Daye v. Attorney Gen. of the State of New York, 696 F.2d 186, 190 (2d Cir. 1982), cert. denied, 464 U.S. 1048 (1982); 28 U.S.C. § 2254(b)(1)(A). 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 in 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 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, 933 F.2d 117, 119 (2d Cir. 1991). “[S]tate 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, 526 U.S. at 845. In addition, mixed petitions, those containing exhausted and unexhausted claims, must be dismissed in their entirety. See Slack v. McDaniel, 529 U.S. 473, 486-87 (2000) (citing Rose v. Lundy, 455 U.S. at 510).

Here, although the petitioner generally characterizes his second ground for relief as ineffective assistance of counsel, his petition and response to the motion to dismiss indicate that he is, in part, claiming that he was not represented by counsel during a mental examination and

competency hearing held before his 1990 plea. The Court has reviewed the files and opinions related to both the 1990 and 1991 convictions and concludes that the petitioner has not raised this previously. The closest reference is in the second state habeas petition, in which he claimed that he was not represented when he entered his 1990 guilty plea, but there is no mention there of a prior lack of representation or its relationship to a mental exam. Thus, the petition is a mixed petition which must be dismissed in its entirety. See id.³

The petitioner, however, also argues that he should be excused from exhausting his state court remedies as to this issue because (1) the state court “denied him a meaningful day in court” at—apparently—the second state habeas proceeding by permitting his attorney to withdraw, and (2) because of the time required to conclude the state habeas process.

As to this second argument, the district court may excuse the exhaustion requirement when it appears that the state corrective process is ineffective to protect a petitioner’s rights. See 28 U.S.C. §2254(b)(1). The Supreme Court has cautioned that an exception to the exhaustion requirement is appropriate only where there is no opportunity to obtain redress in state court or where the state corrective process is so clearly deficient that any attempt to obtain relief is rendered futile. See Duckworth v. Serrano, 454 U.S. 1, 3 (1981). “Inordinate delay in concluding its post-judgment criminal proceedings may preclude a state from relying on the exhaustion requirement to defeat Federal review.” Sapienza v. Vincent, 534 F.2d 1007, 1010 (2d Cir. 1976). The Second Circuit has not defined the precise interval which constitutes an

³In his Memorandum in Support of Motion to Dismiss, the defendant does not point specifically to this issue as not exhausted. However, in his response to the Motion to Dismiss, the petitioner specifically addresses this issue, thus demonstrating that he had notice of it. See Pet’r’s Mem. in Supp. of Mot. in Object. to Resp’t’s Mot. to Dismiss at 2.

inordinate delay. It has noted, however, that an inmate is not required “to wait six years . . . or even three or four years before enlisting federal aid” Simmons v. Reynolds, 898 F.2d 865, 870 (2d Cir. 1990). See, e.g., Simmons, 898 F.2d at 870 (six-year delay in appeal and inability to obtain replacement counsel held sufficient to excuse exhaustion); Brooks v. Jones, 875 F.2d 30, 31-32 (2d Cir. 1989) (eight-year delay during which appointed counsel failed to file appeal held sufficient to excuse exhaustion).

In this case, the state court has timely addressed the two state habeas petitions the petitioner claims are relevant to this action. The second state habeas petition was filed in October 1994 and decided in December 1995. Even if he is challenging the fourth state habeas petition on this basis, it was filed in August 1998 and decided in November 1999. The Court concludes that there has not been an unreasonable delay by the state court in considering the petitioner’s claims in either.

As to the petitioner’s claim that counsel should not have been permitted to withdraw in the second state habeas, the Superior Court conducted an extensive and appropriate review of the motion to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), prior to granting counsel’s motion. More important, the Superior Court’s decision on the second habeas petition was apparently not appealed and thus this issue was not exhausted.

Conclusion

The respondent’s motion to dismiss [Doc. # 6] is GRANTED.⁴ The Clerk is directed to

⁴The petitioner may refile his federal habeas petition after exhausting his state court remedies or by omitting any unexhausted claims. Because the petition is dismissed on exhaustion grounds, the court need not determine whether any or all of the petitioner’s claims also would be time barred.

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 all grounds for relief or that the petitioner should be permitted to proceed further. Accordingly, a certificate of appealability will not issue.

SO ORDERED this 14th day of March, 2001, at Hartford, Connecticut.

/s/

Christopher F. Droney
United States District Judge