

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL YOUNG, :
Petitioner, :
 : PRISONER
v. : Case No. 3:03cv1661(CFD)
 :
WARDEN DAVID STRANGE, :
Respondent. :

RULINGS AND ORDER

The petitioner, Michael Young (“Young”), is currently confined at the State of Connecticut Osborn Correctional Institution in Somers, Connecticut. Young brings this action pro se for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his state convictions. The respondent, the warden at Osborn, asks the court to dismiss this action because Young has not exhausted his state court remedies with regard to all of the grounds for relief asserted in this petition. In response, Young has filed many dispositive motions addressing the merits and has also moved to strike respondent’s motion to dismiss. For the reasons set forth below, the respondent’s motion to dismiss is granted and Young’s motions are denied.

I. PROCEDURAL BACKGROUND

In April 1996, after a jury trial in the Connecticut Superior Court for the Judicial District of Tolland, Young was convicted of three counts of criminal violation of a protective order and one count each of breach of peace, disorderly conduct, reckless endangerment in the second degree and criminal mischief in the third degree¹. He was sentenced to a total effective term of imprisonment of forty-four months. During the pendency of his direct appeal, Young was released from custody on an appeal bond.

¹The convictions arose from three separate incidents occurring on August 4, November 25, and November 30, 1995, involving Young and Brandis Breedlove, who had obtained the protective order against Young. State v. Young, 258 Conn. 79, 779 A.2d 112 (2001).

On direct appeal to the Connecticut Appellate Court, Young argued that “the trial court improperly (1) instructed the jury that [Young’s] failure to produce a certain witness permitted the jury to infer that the witness’ testimony would have been adverse to [Young] [the "missing witness instruction"], (2) precluded evidence of the victim’s prior misconduct, (3) admitted evidence of a telephone conversation without a proper evidentiary foundation, (4) precluded [Young] from impeaching the victim regarding an alleged act of fraud and (5) allowed the state to impeach [Young’s] character with misconduct evidence.” State v. Young, 57 Conn. App. 566, 568, 750 A.2d 482, 484 (2000) (footnote omitted). The Connecticut Appellate Court found in Young’s favor on the first ground, vacated the convictions arising from the incident that occurred on November 25, 1995, and remanded that portion of the case to the Superior Court for a new trial. The Connecticut Appellate court affirmed the convictions on the counts arising from the two other incidents, determined that three of Young’s remaining claims lacked merit and declined to review his final claim (that the trial court improperly allowed the state to impeach his character with misconduct evidence.)

Both parties sought review of this decision by the Connecticut Supreme Court. Young included only two claims in his petition for certification, namely that the trial court improperly (1) precluded evidence of the victim’s prior misconduct and (2) admitted evidence of a telephone call without proper evidentiary foundation. The Connecticut Supreme Court denied Young’s petition for certification. See State v. Young, 253 Conn. 922, 754 A.2d 799 (2000). The Connecticut Supreme Court granted the state’s petition for certification limited to the issue of the missing witness instruction: “Should State v. Malave, 250 Conn. 722, 737 A.2d 422 (1999) (abandonment of Secondino v. New Haven Gas Co., 147 Conn. 672, 165 A.2d 598 [1960] rule

[the missing witness instruction]) be applied retroactively?” State v. Young, 253 Conn. 922, 754 A.2d 799 (2000).

In its decision, the Connecticut Supreme Court determined that the trial court had abused its discretion in giving the missing witness instruction, but found that the error was harmless. Thus, it reversed that portion of the Court of Appeals decision ordering a new trial on the charges arising from the November 25, 1995 incident. In addition, the Connecticut Supreme Court remanded the case to the Connecticut Appellate Court for a decision on the claim not addressed in the Appellate Court’s prior decision. See State v. Young, 258 Conn. 79, 799 A.2d 112 (2001).

On remand, the Connecticut Appellate Court determined that the trial court had properly allowed the state to elicit the impeachment information. See State v. Young, 73 Conn. App. 550, 808 A.2d 748 (2002). On December 30, 2002, the Connecticut Supreme Court denied Young’s petition for certification of this decision. See State v. Young, 262 Conn. 926, 814 A.2d 383 (2002).

On April 9, 2003, Young filed a petition for writ of habeas corpus in state court. That petition remains pending.

Young commenced this action by petition dated September 24, 2003. He asserts three grounds for relief, some containing multiple claims: (1) ineffective assistance of counsel, (2) “malicious prosecutorial vindictiveness and misconduct. Obstruction of justice, Actual innocence, Abuse of Process, violation of Due process” and (3) “Judicial Misconduct, Nondismissal of Judges The trial court abused its discretion when without making any reliability determination, it admitted expert testimony of Battered woman syndrom when it was not at all relivant.” [sic]

On October 29, 2003, Young filed a motion asking this Court to set aside his state convictions, vacate the state sentences and order a new trial. On December 30, 2003, he filed a motion asking this Court to dismiss the underlying state criminal charges. On December 30, 2003 and March 8, 2004, Young filed motions for summary judgment. All of these motions seek the same relief requested in the petition.

On February 11, 2004, respondent filed a motion to dismiss on the ground that Young has not exhausted his state court remedies with regard to all claims included in his federal habeas petition. Young filed his response and a motion to strike the motion to dismiss on February 27, 2004. In addition, he has filed two motions asking the court to expedite its ruling on his motions for summary judgment and other miscellaneous motions.

II. STANDARD OF REVIEW

A prerequisite to habeas corpus relief under 28 U.S.C. § 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 General 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 which may have crept into the state criminal process. See id. “Because the exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts, . . . 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.” See O’Sullivan, 526 U.S. at 845.

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 have “utilized 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)). “To fulfill the exhaustion requirement, a petitioner must have presented the substance of his federal claims to the highest court of the pertinent state.” Bossett v. Walker, 41 F.3d 825, 828 (2d Cir. 1994), cert. denied, 514 U.S. 1054 (1995) (internal citations and quotation marks omitted). See also Pesina v. Johnson, 913 F.2d 53, 54 (2d Cir. 1990) (“[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.”); Grey v. Hoke, 933 F.2d 117, 119 (2d Cir. 1991) (same).

III. DISCUSSION

Respondent argues that Young has not exhausted his state court remedies with regard to all claims included in this federal habeas petition.

To satisfy the exhaustion requirement, Young must have afforded the Connecticut Supreme Court an opportunity to rule on all grounds for relief before raising those grounds in his petition for writ of habeas corpus in federal court.

To date, the only grounds presented to the Connecticut Supreme Court are the first, second, third and fifth grounds raised on direct appeal. Young’s claims of ineffective assistance of counsel, actual innocence, prosecutorial misconduct and judicial bias are included in his state habeas petition that currently is pending before the Connecticut Superior Court. (See Resp’t’s

Mem. App. L.) Young refers the court to many letters he has written to the Superior Court clerk's office and to his attempts to obtain sentence modification. He has not, however, provided any evidence that he has afforded the Connecticut Supreme Court an opportunity to address these claims. Thus, Young has not yet exhausted his state court remedies with regard to the claims included in his state habeas petition or his claims of improper evidentiary rulings.

Because Young has not exhausted all of his grounds for relief, this is a mixed petition, including exhausted and unexhausted claims. The United States Court of Appeals for the Second Circuit has cautioned the district courts not to dismiss mixed petitions containing exhausted and unexhausted claims where an outright dismissal would preclude petitioners from having all of their claims addressed by the federal court because of the one-year limitations period on federal petitions for a writ of habeas corpus². The Second Circuit has advised district courts to stay the

²The limitations period is codified at 28 U.S.C. §2244(d):

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

petitions to permit the petitioners to complete the exhaustion process and return to federal court. See Zarvela v. Artuz, 254 F.3d 374, 380-83 (2d Cir. 2001) (recommending that the district court stay exhausted claims and dismiss unexhausted claims with direction to timely complete the exhaustion process and return to federal court “where an outright dismissal ‘could jeopardize the timeliness of a collateral attack.’”).

Dismissal of this petition, however, would not place Young in danger of violating the federal limitations period challenging a judgment of conviction imposed by a state court. Young’s conviction became final on March 30, 2003, at the expiration of the time within which he could have filed a petition for writ of certiorari to the United States Supreme Court. See Williams v. Artuz, 237 F.3d 147, 151 (2d Cir.) (holding in case where petitioner had appealed to state’s highest court, direct appeal also included filing petition for writ of certiorari to Supreme Court or the expiration of time within which to file petition), cert. denied, 534 U.S. 924 (2001). Ten days later, on April 9, 2003, Young filed his petition for writ of habeas corpus in state court. The filing of the state petition tolls the limitations period through the conclusion of the appeal to the Connecticut Supreme Court of any denial of relief. Because the state petition was filed only ten days into the limitations period and remains pending, nearly all of the time remains. Thus, once the state habeas action, including any direct appeals, has concluded, Young will have almost one year to file a federal habeas petition challenging his conviction.

Unlike the circumstances in Zarvela, the dismissal of this petition will not jeopardize Young’s ability to raise his claims in federal court. In addition, dismissal will permit Young also

to seek federal review of the claims included in his state habeas petition which might be precluded if he proceeds now only on the claims raised on direct appeal.³

IV. CONCLUSION

The respondent's motion to dismiss [**doc. #16**] is **GRANTED** without prejudice to Young filing another federal habeas petition after he exhausts his state court remedies. Young's Motion to Strike Motion to Dismiss [**doc. #25**] is **DENIED**. Young's motions to set aside his state court convictions and vacate his state court sentences [**doc. #4**], to dismiss [**doc. #12**] and for summary judgment [**docs. ##13, 26**] are **DENIED** without prejudice. Young's motions to expedite a ruling on his motions for summary judgment [**docs. ##27, 29**] and to add a respondent and reconsider the denial of assistance in obtaining tape recordings of state court proceedings [**doc. #28**] are **DENIED** as moot. The Clerk is directed to enter judgment in favor of the respondent and close this case.

SO ORDERED this 15th day of September, 2004, at Hartford, Connecticut.

/s/ CFD
Christopher F. Droney
United States District Judge

³The habeas corpus statutes require that before an inmate may file a "second or successive" habeas petition in the district court, he must first apply to the appropriate court of appeals for an order authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A); Esposito v. United States, 135 F.3d 111, 112 (2d Cir. 1997). A petition is considered second or successive if it challenges the same conviction and the first petition was considered on the merits. See Thomas v. Superintendent/Woodbourne Corr. Fac., 136 F.3d 227, 229 (2d Cir. 1997) (per curiam). Thus, if the court considers the merits of this petition, Young cannot later assert the ineffective assistance of counsel claim unless he obtains permission to file a second petition from the Second Circuit.