

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PETER GRAVES,)
)
 Petitioner,)
)
 v.) Civil No. 94-0276-B
)
 STATE OF MAINE,)
)
 Respondent.)

RECOMMENDED DECISION

Petitioner was convicted in July, 1990, of one count of rape, in violation of 17-A M.R.S.A. § 252(1)(B). Petitioner was unsuccessful on the direct appeal of his conviction, as well as a subsequent post-conviction review. He now seeks a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed two separate Petitions for a Writ of Habeas Corpus, which have been consolidated. Together, the Petitions raise several grounds upon which Petitioner bases his claim for relief. As to most of these grounds, Respondent argues that they were correctly resolved by the state courts before which they were presented, and thus the Petition should be dismissed.

The proper analysis in this Court on a Petition for Writ of Habeas Corpus begins with a review of any written factual findings issued by a state court with respect to issues raised in the Petition. 28 U.S.C. § 2254(d). Absent an indication that the findings were not based on a full and fair fact hearing, these factual findings are presumed to be correct. *Id.* The question then becomes whether the facts as found by the state court amount to an unconstitutional incarceration such that Petitioner should be afforded relief. The Court concludes that, in several respects, the state record presents an adequate foundation upon which to make these required findings.

I. Ineffective assistance of counsel regarding “paternity” issue.

Petitioner asserts that his attorney was ineffective in failing to prevent the jury from considering evidence regarding Petitioner’s paternity of the victim’s child. On this issue, the post-conviction justice found as follows:

Based upon the testimony of John Alsop, trial counsel, this Court is satisfied that Mr. Graves endorsed the defense position that the “rape” had been fabricated when the victim found out she was pregnant some two months after the incident. As the Defendant’s trial strategy was to put the issue of pregnancy and paternity squarely before the jury, it would have made no sense for defense counsel to object to the admission of the blood test results or the pregnancy.

. . . In fact, given the circumstances of this case, the trial strategy agreed to between counsel and the Defendant made a great deal of sense. Often the State argues in cases such as this one, what motive would the victim have to falsify her testimony? In this case the defense presented a credible argument concerning the victim’s motive or reason to fabricate. The defense theory of the case . . . was clearly articulated and competently argued.

Judgment at 3-4 (June 23, 1994). The justice concluded: “There was no incompetence, inefficiency, or inattention of counsel on this issue.” This Court agrees.

Ineffective assistance of counsel claims are reviewed under the familiar two-prong analysis set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Specifically, Petitioner must show the Court that counsel’s performance was deficient. *Id.* at 687. Petitioner must also show that, but for counsel’s deficient performance, the outcome of the trial would have been different. *Id.* There is no requirement that the Court analyze these separate prongs in any particular order; a failure to show prejudice will suffice to defeat a particular claim, without reference to the level of counsel’s performance. *Id.*

On the basis of the record as it exists in this case, the Court concludes that counsel’s strategic decision with respect to the paternity question is precisely the sort of decision for which attorneys

must be given great deference. *Strickland v. Washington*, 466 U.S. 668, 689 (1984). “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* Petitioner is not entitled to relief on this ground.

II. Ineffective assistance regarding witnesses.

Petitioner asserts that his attorney improperly dismissed witnesses because they looked “scruffy,” despite his earlier assessment that the testimony of one of these witnesses would be helpful. Petitioner is not entitled to relief on this ground for his failure to articulate who the witnesses were, and how their testimony would have aided Petitioner.

However, Petitioner does mention a Mr. Frazier, whom the post-conviction court found “would merely have corroborated the testimony” of persons who were apparently more persuasive. Judgment at 4. There is thus no indication in the record that Petitioner was in any way prejudiced by counsel’s failure to call Mr. Frazier to testify.

III. Ineffective assistance regarding mistrial request.

Petitioner challenges his attorney’s performance with respect to the length of the jury deliberations in his case. He asserts that his attorney “failed in not addressing the courts about the many notes sen[t] to [the] jury and the fact of two deadlocked decisions after at least 8 hours of not reaching a verdict.” These allegations again state mere conclusions; Petitioner does not explain exactly what his attorney was supposed to do, nor how he would have benefitted.

On Petitioner's allegation that his attorney did not comply with Petitioner's request that he move for a mistrial, the post-conviction justice found as a fact that Petitioner made no such request. The justice further found that, even if he had, there was no indication in the record that Petitioner had suffered prejudice as a result of counsel's failure to follow that instruction. Petitioner has alleged no such prejudice in this Petition. The basis of the motion for a mistrial would simply have been the jury's apparent inability to reach a verdict. There is thus no factual basis upon which to believe a different jury would reach to a different result.

IV. Sufficiency of the evidence.

Petitioner's challenge to the sufficiency of the evidence at trial to support his conviction requires us to examine whether any rational fact finder could have found Petitioner guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). We review the evidence presented at trial in the light most favorable to the prosecution. *Id.*

In Maine, a person is guilty of the crime of rape if he engages in sexual intercourse with a person other than his spouse, and the person submits as result of compulsion. 17-A M.R.S.A. § 252(1)(B). In this case, Petitioner admitted having engaged in sexual intercourse with the victim. He essentially argued that the intercourse was consensual, but that the victim created the rape scenario after learning she was pregnant.

However, in addition to the victim's testimony, which adequately set forth the elements of the crime, there was testimony at trial that the victim had made a consistent statement only one week after the incident, and approximately two months prior to learning of her pregnancy. On this evidence, the Court is satisfied that a rational fact finder could have found proof of guilt beyond a reasonable doubt. Petitioner is not entitled to relief on this ground.

V. Violation of due process in introducing pregnancy/paternity evidence.

Petitioner claims that the state court erred in admitting the evidence of paternity to the jury, and in “making” Petitioner submit to blood testing. To the extent Petitioner is purporting to state a violation of federal constitutional law, as he must under section 2254, he has failed to present the substance of these claims to the state court. The claims are thus procedurally defaulted. Inasmuch as Petitioner has made no attempt to show cause for the default or resulting prejudice, this claim is not cognizable on this Petition for Writ of Habeas Corpus. *See Wainwright v. Sykes*, 433 U.S. 72 (1977).

VI. Violation of due process in failing to declare a mistrial.

Petitioner asserts that the trial court coerced the jury into reaching a verdict by occasionally asking if they were making progress, and refusing to declare a mistrial despite several indications that they were deadlocked. In all, the jury took nine hours to reach a verdict.

This claim was presented to the Maine Law Court on Petitioner’s direct appeal.¹ This Court agrees with the state court’s assessment that there is no suggestion in this record that the verdict was coerced, or that a *sua sponte* declaration of mistrial was required. The jury deliberated nine hours, and reached a verdict. Petitioner does not suggest that the trial justice’s inquiries about their progress would have had a greater impact on those leaning toward a ‘not guilty’ verdict than the other way around. In other words, even if the inquiries could be characterized as “coercion,” the verdict could nevertheless have gone either way.

¹ Like respondent, the Court will assume, without deciding, that Petitioner fairly presented the federal claim to the state court.

As a matter of federal constitutional law, mistrials are to be declared “with the greatest caution, under urgent circumstances, and for very plain and obvious causes.” *United States v. Josef Perez*, 22 U.S. 579, 580 (1824). Further, a mistrial under these circumstances would not bar a retrial. *Id.* Petitioner has shown no error in the trial court’s actions relative to the jury deliberations and Petitioner is not entitled to relief on this ground.

VII. Violation of due process in failing to read back entire testimony of Paul.

On Petitioner’s claim that the trial court erred in selecting only portions of a witness’s testimony for read-back in response to the jury’s request, the Maine Law Court found as follows:

After approximately three and one-half hours of deliberation and six hours before the jury reached a verdict, the jury made the following written request: “Could we have Candace Paul’s testimony regarding when she first talked with [the victim] regarding the incident?” After consultation with the parties, and over the objection of Graves that all of her testimony should be read back, the court had read to the jury that portion of Candace Paul’s testimony the court felt responded to the jury’s request. Prior to the readback, the court read to the jury its request and advised the jury that the reporter would read that portion of Candace Paul’s testimony the court felt was responsive to its request. The court instructed the jury to listen carefully to the testimony read back and stated that if it was not sufficiently responsive to its request “you can send back another note and we’ll attempt to meet that.” And again, after the readback, the court further instructed the jury that if they wished any additional testimony to so advise the court. The record demonstrates the jury had no hesitancy in communicating with the court and did so a number of times thereafter on unrelated matters.

State v. Graves, 609 A.2d 717, 718-19 (Me. 1992). The Law Court concluded that the trial court had not abused its discretion with respect to the readback. On the basis of these factual findings, this Court unequivocally agrees.

Conclusion

For the foregoing reasons, I hereby recommend the Court DISMISS the Petition, and DENY the Writ of Habeas Corpus.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on June 10, 1996.