

I. Background

On January 9, 1995, Petitioner filed a Motion to Suppress evidence seized as a result of a search of his home. Petitioner asserted that the warrant supporting the search of his property contained false information, and that the officers had an obligation to "knock and announce" when executing the warrant. On May 22, 1995, the motion was heard by the trial court. Petitioner had an opportunity to present affidavits and offers of proof in support of his motion. The motion was denied, and Petitioner immediately went to trial in the District Court during which evidence was again presented concerning the fourth amendment issues. Petitioner was found guilty of Unlawful Trafficking in Scheduled Drugs.

Petitioner appealed his conviction to the Maine Superior Court, which remanded the case on the issue of the "knock and announce rule." Petitioner was offered the opportunity to offer additional evidence regarding his claim, but declined. The Maine District Court concluded that, while there was a technical violation of the "knock and announce" rule, it did not warrant suppression of the evidence. Petitioner again appealed to the Superior Court, which upheld his conviction. Petitioner filed his habeas petition with this Court on May 27, 1998, pursuant to 28 U.S.C. § 2254.

II. Discussion

Petitioner argues that he is in custody in violation of his fourth amendment rights, in particular that the police had an obligation to follow the “knock and announce” rule when effectuating a warrant. Fourth amendment claims are not cognizable on petitions for writs of habeas corpus unless the Petitioner can show that he has not been given the opportunity for “full and fair litigation” of his claims in the state courts. *Stone v. Powell*, 428 U.S. 465, 482 (1976). There is no clear standard to follow in order to determine what is a “full and fair litigation of a claim.” However, *Townsend v. Sain*, 372 U.S. 293 (1963) does provide six guidelines to assist the court in determining whether a “full and fair litigation” of claims has occurred.² *Pignone v. Sands*, 589 F.2d 76, 80 (1st Cir. 1978).

The procedural history of the Petitioner’s case demonstrates that he was afforded a “full and fair” opportunity to litigate his claim. Petitioner was afforded two opportunities to present argument and evidence regarding the claim before the Maine District Court, and argued the issue on appeal twice before the Maine Superior Court and once before the Law Court. It is not the duty of this Court to

² Under *Townsend*, and the pre-1996 Habeas Corpus statute, a federal court must provide an evidentiary hearing if “1) the merits of the factual dispute were not resolved in state court; 2) the state factual determination is not fairly supported by the record; 3) the fact finding procedure employed by the state court was not adequate to provide a full and fair hearing; 4) there is a substantial allegation of newly discovered evidence; 5) the material facts were not adequately developed at the state court hearing; or 6) for any reason it appears that the state trier of fact did not afford the Petitioner a full and fair fact hearing.” See *Townsend*. at 313.

question the integrity of the state court proceedings in regards to fourth amendment rights. *Stone*, 428 U.S. at 493-94 n.35. The fact that the search in this case was found by the Superior Court and trial court to have violated the "knock and announce" rule does not alter this conclusion. "Where a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Petitioner may not be granted federal habeas corpus relief on the ground that the evidence obtained in an unconstitutional search and seizure was introduced at his trial." *Id.*, at 494 n.36. Therefore, because the record in this matter reveals that Petitioner received a "full and fair" opportunity to litigate his fourth amendment claim, his Petition for Writ of Habeas may be summarily dismissed.

III. Conclusion

For the foregoing reason, the Court hereby recommends that the Court DISMISS without an evidentiary hearing the Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

NOTICE

A party may file objections to those specific 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 on July 2, 1998.