

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JOEL FULLER, )  
 )  
 Petitioner )  
 )  
 v. ) Civil No. 98-0219-B  
 )  
 CORRECTIONS COMMISSIONER, )  
 )  
 Respondent )

***RECOMMENDED DECISION***

Petitioner has filed a Petition for Writ of Habeas Corpus challenging his 1986 conviction for murder and robbery. Petitioner asserts that the State’s failure to comply with its procedure for reporting the number of grand jurors concurring in an indictment renders his indictment, and therefore his conviction, void. The Court concludes that “it plainly appears from the face of the Petition that Petitioner is not entitled to relief.” Rule 4, Rules Governing Section 2254 Cases. Accordingly, I recommend the Petition be summarily dismissed.

Petitioner asserts that it is a requirement of due process that a minimum of twelve grand jurors concur in returning an indictment, and courts have so held. *Eg.*, *Gaither v. United States*, 413 F.2d 1061, 1066 (D.C. Cir. 1969). The Maine Rules of Criminal Procedure indeed reflect that requirement. Me. R. Crim. P. 6(i). Petitioner’s specific complaint, however, is that the State has offered him no “proof” that there

were twelve or more grand jurors concurring in his indictment, despite a requirement in the Maine Rules that the foreperson file a record with the clerk of court showing the number concurring. Me. R. Crim. P. 6(c).<sup>1</sup>

The only relevant question on this Petition for Writ of Habeas Corpus, however, is whether the reporting requirement the State is alleged to have violated is based in the United States Constitution. *See, Meyers v. Gillis*, 93 F.3d 1147, 1151 (3<sup>rd</sup> Cir. 1996) (noting that the pertinent question was whether the constitution contained the same requirements as a rule of procedure in Arizona regarding guilty pleas). This Court can find no authority to support that proposition, and Petitioner has cited to none. Where the State's procedure comports with the constitution by requiring the concurrence of a minimum of twelve grand jurors, and Petitioner has not argued that the State failed to comply with that procedure, he has presented no colorable claim for relief on this Petition for Writ of Habeas Corpus. *See, DeVincent v. United States*, 632 F.2d 145, 146 (1<sup>st</sup> Cir. 1980) (no further proceedings necessary on section 2255 motion where petitioner "lacked proof of his allegation and was merely speculating about the way in which he was indicted").

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<sup>1</sup> Petitioner makes no colorable claim that there were fewer than twelve concurring. In fact, he concedes that his request for post-conviction relief was denied because the number "20," written on his indictment, was held by the state court to be the actual number of grand jurors concurring in the indictment.

***Conclusion***

For the foregoing reasons, I hereby recommend the Petition for Writ of Habeas Corpus be DISMISSED and the Writ DENIED.

**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.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated on March 3, 2000.