

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SANDRA COOMBS,)	
)	
<i>Petitioner</i>)	
)	
v.)	Docket No. 98-346-P-C
)	
STATE OF MAINE,)	
)	
<i>Respondent</i>)	

RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS

The petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in connection with her conviction in the Maine Superior Court (Cumberland County) on a charge of theft. The petition alleges as grounds for relief that her written confession to the charge was coerced and involuntary, in violation of the Fifth Amendment to the United States Constitution, having been elicited by a promise by the interrogating officer to drop a second criminal charge and destroy evidence that would support the second charge. The respondent contends that dismissal of the petition is required pursuant to 28 U.S.C. § 2254(e) because the question involved is one of fact that was resolved by the state court after it conducted a hearing on the petitioner’s motion to suppress the confession. I recommend that the petition be dismissed.¹

¹ The petitioner has requested a hearing on her motion. Docket No. 5. Inasmuch as the court is required to make a determination whether an evidentiary hearing is required in every case in which a petition under section 2254 has been answered by the state, Rule 8(a), Rules Governing Section 2254 Cases in the United States District Courts, I construe the motion as one requesting oral
(continued...)

I. Background

The petitioner was charged with theft, a violation of 17-A M.R.S.A. § 353 and a Class E crime. Docket Record, *State of Maine v. Sandra Coombs*, Docket No. 95-03959, Maine District Court (Division of Bath-Brunswick). The charge involved the theft of a sweater from the L.L. Bean retail store in Freeport, Maine. Testimony of Keane McGarvey, Transcript [of Hearing held April 30, 1996], *State of Maine v. Sandra Coombs*, Docket No. 95-3959, Maine District Court (Division of Bath-Brunswick) (“Hearing Tr.”), at 6-8, 16. The petitioner was sitting in a parked vehicle outside the store when one Gifford Campbell attempted to return for a refund a sweater that was subsequently determined to have been stolen. *Id.* at 8-10, 12-13, 20. When Sergeant Carter of the Freeport police asked for the vehicle registration, another passenger opened the glove compartment, in which a bag containing what appeared to be marijuana was visible. *Id.* Carter confiscated the bag. *Id.*

After Carter determined that a warrant existed for the arrest of the petitioner for failure to pay a fine, he arrested her and transported her to the Freeport police station. Testimony of Terry Wayne Carter, Hearing Tr. at 35, 47-48, 52. At the station, Carter read the petitioner the *Miranda* warnings, she indicated that she understood, and she spoke to Carter without requesting the presence of counsel. *Id.* at 54-55. The petitioner eventually gave Carter a written statement in which she “implicated herself” in the theft of the sweater. *Id.* at 59. Carter, who had “thought about” charging the petitioner with possession of the marijuana, of which “[t]here was a very small quantity,” then flushed the marijuana down a toilet. *Id.* at 66. The petitioner testified that Carter told her “that I

¹(...continued)
argument on the petition. Finding the written materials submitted to the court sufficient to allow resolution of the question presented, I deny the motion.

could take two charges of theft and possession of marijuana or I could confess to the theft and he'd flush the marijuana." Testimony of Sandra Coombs, Hearing Tr. at 79, 89. She also testified that the bag contained "probably a quarter of an ounce" of marijuana. *Id.* at 99. Carter denied telling the petitioner that she would not be charged with possession of marijuana if she wrote a statement concerning the sweater. Rebuttal Testimony of Terry Carter, Hearing Tr. at 103-04.

The District Court made extensive oral findings of fact and concluded, *inter alia*, "I'm satisfied there were no promises which would give rise to a constitutional infirmity, and I'm satisfied beyond a reasonable doubt that the con — that the admission or the statement or whatever is in this was, in fact, voluntary." Hearing Tr. at 110-11.

The petitioner was convicted by a jury after a trial in Superior Court. Docket Sheet, *State of Maine v. Sandra Coombs*, Docket No. CR96-330, Maine Superior Court (Cumberland County) ("Docket Sheet"), at 2. At the trial, Carter testified that he had written a summons charging the petitioner with possession of marijuana and that he ripped it up, apparently at the time he flushed the marijuana down the toilet. Testimony of Terry Carter, Transcript of Proceedings, *State of Maine v. Sandra Coombs*, Docket No. 96-330, Maine Superior Court (Cumberland County) ("Trial Tr."), Volume I (September 9, 1996), at 41. The petitioner testified at trial that the bag of marijuana "was quite large. It was probably say half of a sandwich bag full." Testimony of Sandra Coombs, Trial Tr., Volume II (September 10, 1996) at 27. A sentence of 30 days in the county jail, all but five days suspended, probation and restitution was imposed. Docket Sheet at 2. The sentence was stayed by this court pending these proceedings. Docket No. 7.

An unsuccessful appeal to the Law Court followed. *State v. Coombs*, 704 A.2d 387 (Me. 1998). The petitioner raised in that appeal the issue she raises here. *Id.* at 391. The petitioner

subsequently petitioned the United States Supreme Court for a writ of certiorari, which was denied. *Coombs v. Maine*, 118 S.Ct. 1819 (1998).

II. Analysis

The petitioner argues that her confession was obtained in violation of the Fifth Amendment because it was extracted by a promise, citing *Bram v. United States*, 168 U.S. 532, 542-43 (1897), and *Arizona v. Fulminante*, 499 U.S. 279, 285-87 (1991). The state, in an argument filling less than one page, relies solely on the presumption of correctness bestowed upon state-court factual findings by 28 U.S.C. § 2254(e)(1). That subsection of the statute provides, in relevant part:

In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

The petitioner argues that the Maine District Court's finding after the suppression hearing was a mixed question of fact and law, and therefore not subject to the statutory presumption, citing *Thompson v. Keohane*, 133 L.Ed.2d 383, 393 (1995).

The provision upon which the state relies was added to section 2254 by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which took effect on April 24, 1996. P.L. 104-132, § 104(2)-(4), 110 Stat. 1218-19, 1319 (Apr. 24, 1996). It is not applicable to cases that were pending on that date. *Lindh v. Murphy*, 117 S.Ct. 2059, 2068 (1997); *Carter v. Johnson*, 131 F.3d 452, 457, 462 (5th Cir. 1997). The charge against the petitioner was brought by complaint filed January 11, 1996. Docket Record. Accordingly, the statutory revision does not apply to this case.

Under the prior version of the statute, which must apply here, the First Circuit has provided

definitive guidance to district courts considering petitions for writs of habeas corpus that raise the issue of voluntariness of a confession when that issue has been ruled upon by a state court. In

Pettway v. Vose, 100 F.3d 198 (1st Cir. 1996), the First Circuit held:

We also feel compelled to address [the petitioner's] claim that the oral and written confessions were coerced. This issue was specifically addressed by the state court. The trial justice, after a detailed inquiry into the claim of coercion and after hearing evidence on the issue from both sides, wrote:

* * *

I find . . . first the verbal statements, then the written statements, were made with full consent of the will and knowingly and intelligently waving [sic] all his constitutional rights and that the State has now in my opinion proven . . . beyond a reasonable doubt . . . [that] the statements attributable to the defendant were voluntarily [sic] and not of any coercion and that he was afforded all of his constitutional rights and he knowingly, intelligently, waived his rights.

Trial Transcript I at 133-34.

Such a finding of fact by the state court is entitled to great deference. On habeas corpus review, we overturn such a finding of fact only if we “conclude[] that such factual determination is not fairly supported by the record.” 28 U.S.C. 2254(d).

Id. at 202-03 (case citations omitted; bracketed material in original).

Applying the *Pettway* standard to the case at hand, I can only conclude that the determination of the suppression hearing court that the petitioner's statement was voluntary is fairly supported by the record, specifically, the testimony of Carter. *See State v. Coombs*, 704 A.2d at 391. While the Supreme Court has said that “the ultimate issue of ‘voluntariness’ is a legal question requiring independent federal determination,” *Fulminante*, 499 U.S. at 287 (quoting *Miller v. Fenton*, 474 U.S. 104, 110 (1985)), application of that guideline does not necessarily generate a different outcome here. The Supreme Court in *Fulminante* reviewed the state court's finding that a confession was not

voluntary by reviewing the totality of the circumstances. *Id.* at 286-88. A review of the totality of the circumstances set forth in the record of the case at hand supports the suppression court's finding that the confession was not involuntary.

None of the Supreme Court opinions upon which the petitioner relies requires a different outcome. In *Bram*, the confession involved was not induced by a promise, and the language quoted by the petitioner is actually a quotation by the court of a criminal law treatise. 168 U.S. at 538-43. In *Fulminante*, the Court specifically rejected the language in *Bram* upon which the petitioner here relies, 499 U.S. at 285, and the critical fact was the existence of a threat of physical violence against the defendant, *id.* at 288, which was not present here. Finally, in *Keohane* the Court held that a state court determination that a defendant was in custody for purposes of *Miranda* was a mixed question of law and fact not subject to the lesser statutory presumption of correctness in force before the AEDPA. 133 L.Ed.2d at 396. If the question of voluntariness is similarly not entitled to any presumption of correctness, my independent review of the record leads me to conclude, although the issue is a close one, that the confession in this case was not involuntary.

III. Conclusion

For the foregoing reasons, I recommend that the petition for a writ of habeas corpus be **DISMISSED** without a hearing.

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) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after 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.

Dated this 25th day of November, 1998.

David M. Cohen
United States Magistrate Judge