

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PATRICK COTE,)	
)	
<i>Petitioner</i>)	
)	
v.)	Docket No. 99-350-P-C
)	
MAINE DEPARTMENT OF)	
CORRECTIONS,)	
)	
<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 his conviction after a jury trial in the Maine Superior Court (Cumberland County) on charges of operating a motor vehicle after revocation as an habitual offender in violation of 29-A M.R.S.A. § 2557 and operating under the influence of intoxicants (“OUI”) in violation of 29-A M.R.S.A. § 2411. I recommend that the petition be dismissed.

I. Background

On the petitioner’s direct appeal from his conviction, the Law Court gave the following summary of the facts presented at trial.

On August 13, 1997, [an officer] of the Bridgton Police Department noticed three individuals — Calvin Hartzell, Linda Ashe, and Cote — in a local convenience store. When the cashier refused to sell alcohol to them, [the officer] suspected that the individuals were intoxicated. Because the group had driven into the parking lot in one

car, he sought to determine who had been driving. [He] ultimately asked the cashier whether she had seen which of the three had driven the car into the parking lot. She identified Cote as the driver.

Cote's eyes appeared bloodshot and he admitted consuming "a few beers." [The officer] therefore conducted several field sobriety tests with Cote. When Cote performed poorly on the tests, [the officer] arrested him for operating while under the influence of intoxicants and transported him to the Bridgton Police Department in order to conduct a chemical test. After being read the implied consent form, Cote indicated his understanding of its contents, signed the form, and refused to submit to the test.

* * *

At the time of his arrest, Cote's license was revoked as a result of a prior habitual offender conviction and, on two prior occasions, his license had been suspended when he refused to submit to a chemical test. . . .

Cote filed a motion challenging the classification of his OUI charge as a Class C crime, contending that enhancing an OUI charge to a Class C crime because of two prior refusal suspensions violated his right to due process. The court denied the motion.

. . . [A] jury subsequently convicted Cote of OUI and for operating after habitual motor vehicle offender revocation. On the Class C OUI conviction, the Superior Court sentenced Cote to four years in prison, a \$2400 fine, and a six-year license suspension.

State v. Cote, 736 A.2d 262, 263-64 (Me. 1999). The appeal was based on the petitioner's contention that the use of his two prior refusal suspensions to enhance his OUI conviction to a Class C offense under 29-A M.R.S.A. § 2411(5)(D) violated his right to due process because "the implied consent form failed to inform him, prior to his refusal, that the refusal had ramifications beyond those specifically enumerated in the form." *Id.* at 264. The Law Court denied the appeal. *Id.* at 267.

The respondent agrees that the petitioner has exhausted his state remedies as to this claim. State's Answer to Petition for Writ of Habeas Corpus ("State's Answer") (Docket No. 3) at 3.

II. Discussion

The petition is based on the same issue raised in Cote's direct appeal to the Law Court. Petition Under 28 USC § 2254 for Writ of Habeas Corpus by a Person in State Custody ("Petition") (Docket No. 1) at 5. This court may not grant relief under section 2254 "with respect to any claim that was adjudicated on the merits in State court proceedings" unless the state court adjudication of that claim

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). Here, the petitioner does not contend that the Law Court's factual determination was unreasonable. His sole argument is that the Law Court's decision was contrary to clearly established Federal law, specifically *Bell v. Burson*, 402 U.S. 535, 542 (1971). Memorandum of Law in Support of Petition for Writ of Habeas Corpus, attached to Petition, at 3-4.

The Law Court's decision does not mention *Bell*, in which the appellant contended that a state law providing that the license of an uninsured motorist involved in an accident shall be suspended unless he posts security to cover the amount of damages claimed by aggrieved parties in reports of the accident, regardless of actual liability, denied him due process. 402 U.S. at 536. The appellant was provided with a hearing by the responsible state agency before his license was suspended, but was not allowed to contest his liability for the accident at the hearing. *Id.* at 537-38. The Court held that "[i]n such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Id.* at 539. The meaning of the term "such

cases” is not entirely clear from the context of the opinion, but it apparently refers to the requirement that only motorists involved in accidents were required to post security on pain of loss of their licenses. The Court also noted that “[a] procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case.” *Id.* at 540. Finally, in the passage upon which the petitioner here bases his argument, the Court observes that “it is fundamental that except in emergency situations . . . due process requires that when a State seeks to terminate an interest such as that here involved, it must afford ‘notice and opportunity for hearing appropriate to the nature of the case’ *before* the termination becomes effective.” *Id.* at 542 (emphasis in original).

The lack of notice was not at issue in *Bell*, so the quoted language is dictum with respect to any requirement for notice. In addition, no constitutionally-protected interest was terminated in the instant case; at most, the petitioner’s liberty was restricted for a longer time than would have been possible if the earlier suspensions had not been considered with respect to sentencing.¹ Even if these

¹ The relevant statute provides:

1. Offense. A person commits OUI, which is a Class D crime unless otherwise provided, if that person operates a motor vehicle:

- A. While under the influence of intoxicants; or
- B. While having a blood-alcohol level of 0.08% or more.

* * *

5. Penalties. The following minimum penalties apply and may not be suspended:

* * *

D. For a person having 3 or more previous OUI offenses within a 10-year period, which is a Class C crime:

- (1) A fine of not less than \$2,000, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$2,400;
- (2) A period of incarceration of not less than 6 months, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 6 months and 20 days;

(continued...)

distinguishing factors were not sufficient to conclude that *Bell* does not in fact represent clearly established federal law on point, a later Supreme Court decision provides much clearer guidance on the issue at hand.

In *Nichols v. United States*, 511 U.S. 738 (1994), the petitioner pleaded guilty to a charge of conspiracy to possess cocaine with intent to distribute. *Id.* at 740. Pursuant to the sentencing guidelines then in effect, the court assessed an additional criminal history point for a state misdemeanor conviction for driving under the influence, a proceeding in which the petitioner was not represented by counsel. *Id.* at 740-41. The additional criminal history point increased the sentencing range from 168-210 months to 188-235 months. *Id.* at 740. Equating sentencing enhancement with state recidivist statutes, of which 29-A M.R.S.A. § 2411(5)(D) is clearly one, the Court rejected the petitioner’s contention that “at a minimum, due process requires a misdemeanor defendant to be warned that his conviction might be used for enhancement purposes should the defendant later be convicted of another crime.” *Id.* at 747-48.²

Finding no reasonable basis to distinguish *Nichols* from the case at hand, I conclude that the Law Court’s decision was neither contrary to, nor did it involve an unreasonable application of,

¹(...continued)

- (3) A court-order suspension of a driver’s license for a period of 6 years; and
- (4) In accordance with section 2416, a court-ordered suspension of the person’s right to register a motor vehicle.

29-A M.R.S.A. § 2411. For a person with only one previous OUI offense within a 10-year period who fails to submit to testing, the minimum period of incarceration is 40 days. 29-A M.R.S.A. § 2411(5)(B).

² The Law Court reiterated in the petitioner’s direct appeal that “[d]ue process concepts embodied in the Maine Constitution provide no greater protection to individuals than do those concepts contained within the United States Constitution.” *Cote*, 736 A.2d at 265 n.6.

clearly established federal law.

III. Conclusion

For the foregoing reasons, I recommend that the petition be **DISMISSED** without an evidentiary 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 5th day of January, 2000.

*David M. Cohen
United States Magistrate Judge*