

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

NORMA M. SHELDON )  
 )  
 Petitioner )  
 )  
 v. ) Civil No. 00-226-B-S  
 )  
 STATE OF MAINE )  
 )  
 Respondent )

**RECOMMENDED DECISION**

Petitioner, Norma M. Sheldon filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on November 6, 2000. (Docket # 1) The respondent, the State of Maine, filed a motion to dismiss (Docket # 4) on December 12, 2000, arguing that Sheldon has yet to exhaust her state remedies as to one of her two grounds for relief.

The two grounds that Sheldon asserts entitle her to habeas corpus relief from her state conviction are that she was denied the right to see the evidence used to convict her and that she was denied effective assistance of counsel. Although Sheldon has aired the first ground in her prior state court challenges to her conviction and sentence, as to the second claim she has yet to raise it in state court.<sup>1</sup>

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<sup>1</sup> Sheldon acknowledges in her petition that she did not present this ground in her direct appeal to the Maine Supreme Judicial Court sitting as the Law Court, or in her unsuccessful prosecution of her Rule 33 and 35(b) motions. She states that she did not appeal on this ground because she “was not told [she] could say anything against a court appointed attorney and still receive any help from her.”

Pursuant to Maine law, it would have been inappropriate for Sheldon to raise her ineffective assistance of counsel claim on her direct appeal. *See State v. Nichols*, 1997 ME 178, ¶ 4, 698 A.2d 521, 522 (“[W]e will not consider a claim of the ineffective assistance of counsel on direct appeal; henceforth, we will consider such a contention only after we issue a certificate of probable cause following a hearing on a post-conviction petition.”). And it would have been inadvisable to do so in the context of her Rule 33 challenge because Sheldon’s motion for a new trial was filed outside the ten-day window of opportunity provided by Maine Rules of Criminal Procedure 33. As a consequence, her grounds for a new trial were limited to “newly discovered evidence” for which the rules provide a two-year window. *See Me. R. Crim. P. 33*. As the State points out in its motion, the Law Court has made it crystal clear that “ineffective assistance of counsel at trial cannot qualify as ‘newly discovered evidence’; it is not ‘evidence’ at all that could be presented to a jury as having relevance to the innocence or guilt of defendant.” *State v. Clement*, 431 A.2d 67, 69 (Me. 1981).

Section 2254 conditions the granting of a writ of habeas corpus on Sheldon having “exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A).<sup>2</sup> The Supreme Court and the First Circuit have left no doubt that a petitioner seeking federal habeas review must have first exhausted all avenues of relief in the state court. *See Rose v. Lundy*, 455 U.S. 509, 520 (1982) (instructing *pro se* litigants, “[B]efore you bring any claims to federal court, be sure that you first have taken each one to state court,” and observing, “Just as *pro se* petitioners have managed to use the federal habeas machinery, so too should they be able to master this straightforward exhaustion requirement”); *Martens v. Shannon*, 836 F.2d 715, 717 (1<sup>st</sup> Cir. 1988) (stressing that “federal habeas oversight is not a freewheeling construct,” but is “dependent, among other things, upon all the claims asserted in the petition having been exhausted in the state courts,” citing *Rose*). Since Sheldon has never broached her ineffective assistance of counsel challenge with the state court, she is not currently entitled to federal habeas review of her petition, in whole or in part.

For these reasons, I hereby recommend that the Court grant the Respondent’s motion and that the petition be **DISMISSED**.

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<sup>2</sup> There is no assertion or indication that the § 2254(b)(1)(B) exceptions are in any way implicated by Sheldon’s petition. The State of Maine has a comprehensive post-conviction relief statute, 15 M.R.S.A. § 2121, et seq. Petitioner has not suggested that there is “an absence of available State corrective process” that would trigger any exception.

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 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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Margaret J. Kravchuk  
United States Magistrate Judge

Date: January 10, 2001

U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 00-CV-226

SHELDON v. MAINE, STATE OF  
Assigned to: Judge GEORGE Z. SINGAL  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None

Filed: 11/06/00  
Nature of Suit: 530  
Jurisdiction: Federal Question

Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

NORMA M SHELDON  
plaintiff

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v.

MAINE, STATE OF  
defendant

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