

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>PAUL A. LINDSEY, SR.,</b>	)	
	)	
<i>Petitioner</i>	)	
	)	
v.	)	<i>Civil No. 97-349-P-C</i>
	)	
<b>SUPERINTENDENT, MAINE</b>	)	
<b>CORRECTIONAL CENTER,</b>	)	
	)	
<i>Respondent</i>	)	

**RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS**

The *pro se* petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in connection with his conviction, based upon guilty pleas, in the Maine Superior Court (Oxford County) for assault and violation of probation. The judgment of conviction was entered on the assault charge on October 19, 1995 and the judgment on the probation violation was entered on July 2, 1997. Petition (Docket No. 2) at 1, 6. The petitioner asserts that his plea to the charge of assault was made under duress, that his sentence on that conviction was illegal, and that his sentence on the probation violation subjects him to double jeopardy in that he is being punished twice for the same violation. I recommend that the court dismiss the petition.

**I. Background**

The petitioner pleaded guilty to the charge of assault, a violation of 17-A M.R.S.A. § 207, in the Maine Superior Court (Oxford County) on October 19, 1995. Admission to Probation Violation & Misdemeanor Plea Proceedings (“Plea Tr.”), *State of Maine v. Paul A. Lindsey*, Superior Court

(Oxford County) Docket No. CR-93-274 & CR-95-318, Transcript at 4. The petitioner admitted to a violation of the probation imposed in Docket No. CR-95-318 on July 2, 1997 and was sentenced to a jail term of 364 days. Docket Sheet, *State of Maine v. Paul A. Lindsey*, Superior Court (Oxford County), Docket No. CR-95-318, at [2].

The sentence imposed pursuant to a plea bargain on the assault charge included a one-year term of probation, one of the conditions of which was that the petitioner was not to enter the towns of Hiram or Fryeburg. Plea Tr. at 5, 8-11. The petition alleges that while the petitioner was being held in the York County Jail pursuant to the probation violation, he was assaulted by a deputy sheriff. Petition at 6. This is the basis for the double jeopardy allegation.

## **II. Analysis**

The respondent asserts that the petitioner has failed to exhaust the remedies available to him in state court, as required by 28 U.S.C. § 2254, and that this petition must therefore be dismissed. Section 2254(b)(1) provides that an application for a writ of habeas corpus shall not be granted unless it appears that “the applicant has exhausted the remedies available in the courts of the State.” An applicant shall not be deemed to have exhausted the remedies available to him in state court if he has the right under state law to raise, “by any available procedure,” the question presented in the petition. 28 U.S.C. § 2254(c). “[A] federal court will ordinarily defer action on a cause properly within its jurisdiction until the courts of another sovereign with concurrent powers, already cognizant of the litigation, have had an opportunity to pass upon the matter.” *Scarpa v. Dubois*, 38 F.3d 1, 6 (1st Cir. 1994) (finding that this practice is codified in section 2254).

Here, the petitioner has initiated a post-conviction review proceeding in the Maine Superior Court that presents each of the grounds asserted in his petition to this court. Petition for Post-

Conviction Review, *Paul A. Lindsey, Sr. v. State of Maine*, Superior Court (Oxford County) Docket No. CR-97-272, at 3-4. He is represented by counsel in that action, in which the petition was filed on July 31, 1997. Docket Sheet. The docket sheet in that proceeding submitted to this court by the respondent on December 8, 1997 shows that the matter remains pending. The petitioner has not argued that the state post-conviction review process which he has invoked is ineffective to protect his rights, and no such inadequacy is apparent in the record presented to this court. Accordingly, this court may not consider the petition for a writ of habeas corpus.

### **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 at Portland, Maine this 24th day of December, 1997.*

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*David M. Cohen  
United States Magistrate Judge*