

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

HERBERT T. HAMPE,)
)
 Petitioner)
)
 v.) Civil No. 04-40-B-W
)
 WARDEN, MAINE STATE PRISON,)
 et al.,)
)
 Defendants)

Recommended Decision on 28 U.S.C. § 2254 Petition

Herbert Hampe is serving a state sentence for his 2002 conviction on a state marijuana charge. Hampe was tried twice on these charges; his first trial ended in a hung jury and his second trial ended in a guilty verdict. Hampe insisted on representing himself during the majority of the first and the entirety of the second trial. Hampe has filed a 28 U.S.C. § 2254 petition seeking federal relief from his conviction. (Docket No. 1.) Describing himself as a wholesome beekeeper and lifetime gardener who sometimes used pot to alleviate serious ongoing medical conditions, Hampe delineates four grounds and, in a straying fashion, describes multiple other wrongs done him during his trial. For the reasons below, I recommend that the Court **DENY** the § 2254 petition as, procedural flaws aside, not one of Hampe's claims has merit.

Discussion

State Court Post-trial Proceedings

Hampe was sentenced on September 26, 2002, to a four-year prison term with all but eighteen months suspended, to be followed by a four year period of probation. On September 26, 2002, Hampe filed an application to the Law Court seeking to appeal his split sentence. An order dated October 29, 2002, denied Hampe leave to appeal his sentence. On October 2, 2002, Hampe

was appointed counsel to represent him on his direct appeal. Counsel filed an amended notice of appeal and submitted a brief asserting a single ground: Hampe's second trial contravened the protection against double jeopardy in the Maine and United States Constitutions. In a single paragraph decision, reprinted below, the Maine Supreme Court sitting as the Law Court rejected the argument that Hampe's second trial placed him in double jeopardy. Maine v. Hampe, Docket No. 03-69 (Me. Sup. Jud. Ct. May 1, 2003)(mem.).¹

Section 2254 Grounds

Hampe lists four different ways in which he believes his state court conviction is subject to attack. First, Hampe contends that the prosecution did not honor the Freedom of Information Act when it refused to turn over more than two police reports although, Hampe believes, over ten should have been produced. Hampe indicates that he filed a motion to obtain these additional reports to no avail. Second, Hampe argues that he was twice put into jeopardy on the same drug charges, as the State's first trial in April of 2001 resulted in a hung jury. Third, he lodges an ineffective assistance of counsel claim against his attorney for his first trial citing her failure to obtain the additional police reports referenced in his first ground. He notes that he fired this attorney during the first trial due to his need to have constitutionally effective counsel. And, fourth, Hampe claims that a different attorney who represented him on his direct appeal to the Maine Supreme Court did not investigate his charge of embracery² vis-à-vis Carl Gottardi. Hampe says

¹ In his § 2254 petition Hampe states that he sent the same list of grounds he now presents here to the Maine Supreme Court in a handwritten document of which he does not have a copy. As no reference was made to it in the Law Court's memorandum he believes that the Court may have only received his attorney's brief with its facts and reasons. However, the record before me includes a copy of Hampe's pro se handwritten appeal to the Law Court dated August 13, 2002. In an order of consolidation dated October 2, 2002, the Law Court consolidated Hampe's pro se appeal with the appeal filed on Hampe's behalf by his attorney.

² Blacks Law Dictionary defines embracery thusly:

The attempt to corrupt or instruct the jury to reach a particular conclusion by means other than presenting evidence or argument in court, as by bribing or threatening jurors; a corrupt or wrongful attempt to influence a juror's vote on a verdict. – Also termed jury-tampering; laboring a jury. Cf. JURY-FIXING;

Gottardi went, on his own accord, into the jury room during Hampe's first trial with mystery boxes of evidence and Hampe did not have an opportunity to examine what was in the boxes. Hampe also faults his appellate attorney for not investigating an order on a motion to suppress issued on May 3, 1999, in which the judge ordered suppressed statements made by Hampe to Detective Boucher. Hampe asserts that the suppression order was honored during the first trial but not during his second trial (in which Hampe proceeded pro se).

In his memorandum in support of his grounds Hampe describes other wrongs done him during the state proceedings. He complains about the trial judge in his second trial cutting him off and not allowing him a rebuttal to the prosecution's closing argument. He also states that this judge prevented him from entering into evidence his medical records to demonstrate competing harms. And, he protests that the state docket impermissibly describes his multiple motions filed on his own behalf as only "other motion" obfuscating the nature of his claims.

By way of general explanation of his innocence, Hampe proclaims that the only person injured by his crime was himself. Hampe states he never had a scale and that his modest way of life should have made it apparent that he was not a trafficker. It was an acquaintance, Scott Anton, who Hampe claims cared for his property and planted the pot on Hampe's farm that formed the basis of Hampe's state charges. He also describes how he loathes drug abuse. He explains that when the authorities did their first fly over of his property he was prompted to burn the marijuana plants in anticipation of their raid. When the raid occurred he was forced to hide under a truck for five hours even though the officers involved knew full well of his location.³

JURY-PACKING.

Black's Law Dictionary 540 (7th ed. 1999).

³ Hampe also claims that the prison food is making him sick as it has too much salt which aggravates the high level of lead in his blood. He explains that he needs an operation to remove Pb (lead) poisoning from his left hip. These are not claims that can be brought in a 28 U.S.C. § 2254 petition as they concern the conditions of his confinement and not his conviction or the imposition of his sentence. Hampe is also worried about his bees and livestock and states he needs to get out of jail to care for

Discussion

This court can "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). The State concedes that Hampe is in custody for 28 U.S.C. § 2254 purposes.

This petition could raise, however, rather prickly issues about other gate-keeping requirements imbedded in the § 2254 statutory scheme. These concerns arise in particular with respect to the presence of the two ineffective assistance of counsel claims in Hampe's § 2254 petition. Section 2254(b)(1)(A) provides that Hampe cannot bring claims to the federal forum unless he has "exhausted the remedies available in the courts of the State." The statute further provides that a § 2254 applicant "shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented." § 2254(c). It is now clear⁴ that Hampe, while he did file a direct appeal, did not file a state post-conviction petition which would

them or they will perish. These collateral consequences are also not cognizable in a habeas proceeding.

⁴ This court does screen § 2254 petitions when they are filed in an attempt to spot any procedural infirmities prior to requiring the State to respond. However, the status of Hampe's claims in terms of exhaustion was not self evident from the face of the petition and only the records provided in the State's response shed adequate light on that question and, at the same time, highlight the time concerns for Hampe vis-à-vis his state post-conviction opportunity.

The United States Supreme Court has recently recognized the limitations on a federal court's attempts be proactive in responding to a petition when first filed, backing away from a directive that would force upon district judges the potentially burdensome, time-consuming, and fact-intensive task of making a case-specific investigation and calculation of whether the AEDPA limitations period has already run or will have run by the time the petitioner returns to federal court. As the dissent below recognized, district judges often will not be able to make these calculations based solely on the face of habeas petitions. 330 F.3d, at 1108. Such calculations depend upon information contained in documents that do not necessarily accompany the petitions. This is so because petitioners are not required by 28 U.S.C. § 2254 or the Rules Governing § 2254 Cases to attach to their petitions, or to file separately, state-court records. See 1 R. Hertz & J. Liebman, *Federal Habeas Corpus Practice and Procedure* § 15.2c, p. 711 (4th ed.2001) ("Most petitioners do not have the ability to submit the record with the petition, and the statute and rules relieve them of any obligation to do so and require the state to furnish the record with the answer"). District judges, thus, might err in their calculation of the statute of limitations and affirmatively misinform pro se petitioners of their options. *Pliker v. Ford*, ___ U.S. ___, ___ 2004 WL 1373174, *5 (June 7, 2004) (footnote omitted).

have been the appropriate fulcrum for obtaining state review of these claims, see State v. Donovan, 1997 ME 181, ¶ 12, 69 A.2d 1045, 1049. Under Rose v. Lundy, 455 U.S. 509 (1982) and, now, Pliler v. Ford, ___ S.Ct ___, 2004 WL1373174 (June 21, 2004) a court must either stay or must dismiss petitions that contain a mix of exhausted and unexhausted claims unless the petitioner amends the petition by withdrawing the unexhausted claims.

And this exhaustion problem raises the specter of Hampe's running afoul of yet another § 2254 gate-keeping provision: the § 2244(d)(1)(A) statute of limitation. Hampe had one year to file for federal habeas relief and, for the purposes of Hampe's § 2254 petition, the one-year period began to run from the later of two dates: "the date ... the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A).

The Maine Law Court issued its memorandum of decision on May 1, 2003. The § 2244(d) one-year period did not begin to run until the time for seeking review in the United States Supreme Court lapsed on July 30, 2003. Therefore, Hampe's federal one-year statute of limitation did not begin to run until July 31, 2003. This motion, signed on March 9 and filed on March 29, 2004, is clearly within the § 2244(d) period.

However, because of the existence of the unexhausted claims, this case implicates the State's own statute of limitation. The parallel state statute provides:

5. Filing deadline for direct impediment. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 1 or 1-A. The limitation period runs from the latest of the following:

- A.** The date of final disposition of the direct appeal from the underlying criminal judgment or the expiration of the time for seeking the appeal;
- B.** The date on which the constitutional right, state or federal, asserted was initially recognized by the Law Court or the Supreme Court of the United States, if the right has been newly recognized by that highest court and made retroactively applicable to cases on collateral review; or
- C.** The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

The time during which a properly filed petition for writ of certiorari to the Supreme Court of the United States with respect to the same criminal judgment is pending is not counted toward any period of limitation under this subsection.

15 M.R.S.A. § 2128(5). It is the State's position that 313 days of the statute of limitation for filing a post-conviction review petition under 15 M.R.S.A. § 2128(5) had run by the time Hampe filed this petition. The State takes the further position that the period lapsed on May 1, 2004, while this federal habeas was pending. It reasons that, because the United States Supreme Court held in Duncan v. Walker, 533 U.S. 167 (2001) that the pendency of a federal habeas does not toll the federal statute of limitation, the State court would hold that the pendency of a federal habeas does not toll the state's limitation period. It is the State's position that the three of the four § 2254 claims not exhausted by Hampe by the filing of a state post-conviction are procedurally defaulted, see O'Sullivan v. Boerckel, 526 U.S. 838, 848 (1999); id. at 853-54 (Stevens, J. dissenting).

I have no difficulty concluding that under the applicable United States Supreme Court precedent analyzing exhaustion, Hampe has only fully exhausted his double jeopardy claim. However, I have some difficulty so readily concluding that the other three claims are procedurally defaulted under state law. It is not clear to me that the state court would not consider the pendency of the federal petition at the time Hampe's year expired as a ground for tolling its one-year period. There is no Maine precedent that would help answer this question. And, as the State points out, there were three motions for reconsideration filed by Hampe after the decision on his direct appeal, with the third order on the third motion issuing June 13, 2003.

However, as the State acknowledges, the federal court is free to deny relief as to any unmeritorious unexhausted ground. See 28 U.S.C. § 2254(b)(2) ("An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State."). Hampe initially took the position that he

presented these claims in his pro se notice of appeal to the Maine Law court and has now responded to the State's answer that raises the exhaustion concern with a reply that does not address the matter. All things considered, I conclude that this is a petition in which it is appropriate to review the unexhausted, potentially procedurally defaulted, claims to determine if they have any underlying merit.

Failure to Turnover Police Reports -- Ground I

Although Hampe conceives of this claim as one brought under the Freedom of Information Act, in the context of his challenge to the validity of his jury trial, it only has viability in the federal habeas context as a challenge under the federal due process clause. That is, if there were police reports withheld that contained evidence that would have either helped Hampe impeach witnesses or exculpate himself this would raise concerns under Brady v. Maryland, 373 U.S. 83 (1963). "A Brady violation has three components: '[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.'" United States v. Casas, 356 F.3d 104, 114 (1st Cir. 2004) (quoting United States v. Josleyn, 206 F.3d 144, 153 (1st Cir. 2000) quoting Strickler v. Greene, 527 U.S. 263, 280 (1999)).

Hampe's argument that there were reports withheld by the police or prosecution is pure conjecture. Hampe nowhere cites to evidence suggesting that more than two police reports were generated vis-à-vis his arrest; his claim is based on wholesale speculation that there must have been more and he pulls the figure ten out of thin air. United States v. McGill, 11 F.3d 223, 225 (1st Cir.1993) ("When a petition is brought under section 2255, the petitioner bears the burden of establishing the need for an evidentiary hearing. In determining whether the petitioner has carried the devoir of persuasion in this respect, the court must take many of petitioner's factual

averments as true, but the court need not give weight to conclusory allegations, self-interested characterizations, discredited inventions, or opprobrious epithets.”) (citations omitted). So even if this claim was queued up for federal § 2254 review it has no merit.

Ineffective Assistance of Counsel Claims

To succeed with his ineffective assistance claims Hampe must demonstrate, one, that counsel's performance fell below an objective standard of reasonableness, and, two, that, but for the error or errors, the outcome of his case would likely have been different, Strickland v. Washington, 466 U.S.668, 687 (1984).

Ground III –Ineffective Assistance during First Trial

By way of background, Hampe had court appointed counsel who actively represented him through the jury selection proceedings at the first trial. Discontented that counsel would not ask the court to question jurors on certain subjects and that she did not challenge certain jurors based on Hampe's criteria, Hampe told the court at the close of the jury selection proceeding that he no longer wanted counsel assistance. (Apr. 2001 Trial Tr. at 37- 52.) The judge cautiously acquiesced but provided that counsel should remain available to Hampe to answer questions during the trial. (Id. at 51-52.) Hampe is not raising in his federal petition any claim relating to this transition to a pro se defendant status.

Hampe's claim that counsel was ineffective in failing to obtain the additional police reports fails on its merits for the same reason that his first ground fails; it is a claim premised on sheer speculation that there were additional reports that were withheld. See McGill, 11 F.3d at 225-26.

Ground IV – Ineffective Assistance on Appeal

Hampe's ineffective assistance claims vis-à-vis his appellate counsel is twofold. First he claims that appellate counsel did not investigate Hampe's charges of jury tampering by Carl Gottardi during the first trial. The most glaring shortfall with this claim is that Hampe at no time provides this court with any factual details supporting this assertion. He does not even get so far as stating that he has a witness who saw Gottardi enter the jury room. See McGill, 11 F.3d at 225-26 ("[A] § 2255 motion may be denied without a hearing as to those allegations which, if accepted as true, entitle the movant to no relief, or which need not be accepted as true because they state conclusions instead of facts, contradict the record, or are 'inherently incredible.'")(quoting Shraiar v. United States, 736 F.2d 817, 818 (1st Cir.1984) and citing Rule 4(b), Rules Governing Section 2255 Proceedings). Without stating what information in substantiation of the jury tampering claim Hampe gave to appellate counsel when he asked counsel to investigate such a claim, I cannot conclude that counsel's performance fell below an

objective standard of reasonableness under Strickland. Hampe has utterly failed to meet his burden of stating an ineffective assistance claim apropos his appellate counsel.

Hampe's ineffective assistance of appellate counsel claim concerning the first trial suppression order being ignored at the second trial is entirely illogical. If there was any responsibility for the admission of testimony at the second trial it was Hampe's. At his own insistence Hampe represented himself at the second trial and he did so at his own peril. If he failed to object to the admission of testimony on a viable ground then he only has himself to blame. In light of Hampe's responsibility for his own defense at the second trial, it would have been entirely frivolous for counsel to raise such a claim on direct appeal.

Double Jeopardy- Ground II

Hampe's double jeopardy claim is the only claim that is exhausted and this court must review the Maine Law Court's disposition of it to determine if it:

- (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).

The Law Court's memorandum rejecting Hampe's double jeopardy claim provided:

Herbert Hampe appeals from a judgment of the Superior Court (Somerset County, Jabar, J.) convicting him of one count of unlawful trafficking in scheduled drugs (Class C) in violation of 17-A M.R.S.A. § 1103 (1) (Supp. 2002) (amended 2003). Hampe contends that the court abused its discretion when it declared a mistrial at his first trial. The jury at his first trial deliberated for over five hours and reported a deadlock two times, each juror believed that the jury was hopelessly deadlocked, and Hampe was given an opportunity to participate in the decision to declare the mistrial. The court did not abuse its discretion when it declared a mistrial for manifest necessity. State v. Torrie, 2002 ME 59, ¶¶ 8-13, 794 A.2d 82, 85-87.

Maine v. Hampe, Docket No. 03-69 (Me. Sup. Jud. Ct. May 1, 2003)(mem.).

In the cited State v. Torrie, the Law Court comprehensively articulated the constitutional standard for a double jeopardy claim in the context of a mistrial for manifest necessity. It wrote:

Both the United States and the Maine Constitutions protect persons from being "twice put in jeopardy of life or limb" for the same offense. See U.S. CONST. amend. V; ME. CONST. art. 1, § 8. "A crucial aspect of double jeopardy is the right of the defendant to have his case tried completely by one tribunal." State v. Nielsen, 2000 ME 202, ¶ 5, 761 A.2d 876, 878. "[J]eopardy attaches when the jury is impaneled in a jury trial." Id. After a jury has been impaneled, a declaration of mistrial prevents the government from attempting prosecution again on the same charges unless the defendant consents to the mistrial or a manifest necessity exists. Id. ¶ 5, 761 A.2d at 878-79. A jury that is genuinely deadlocked and has no reasonable probability of reaching an agreement is a classic example of manifest necessity. Id. ¶ 6, 761 A.2d at 879; see also State v. Landry, 600 A.2d 101, 102 (Me.1991).

"Although the trial court is granted broad discretion in deciding whether to declare a mistrial and discharge a jury, the power to declare such a mistrial 'ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes.' " State v. Derby, 581 A.2d 815, 817 (Me.1990) (internal cites omitted). On appeal of a denial of a motion to dismiss on grounds of double jeopardy following a mistrial based on manifest necessity, "we review the ruling of the motion justice to determine whether the findings of fact of the trial justice, and of the motion justice, are supported by substantial evidence, and whether the legal conclusion is correct." Nielsen, 2000 ME 202, ¶ 7, 761 A.2d at 879 (citing Landry, 600 A.2d at 102). "In reviewing a determination that the necessity for a mistrial is manifest, *i.e.*, evident, obvious, and apparent," see Landry, 600 A.2d at 102, we "examine four [objective] factors to determine if a finding that the jury was deadlocked is supported and the declaration of a mistrial is justified," see Derby, 581 A.2d at 817. Those factors are

- 1) The number of hours the jury had deliberated,
- 2) the number of communications from the jury indicating an inability to reach a verdict,
- 3) whether each individual juror was asked whether any reasonable expectations of reaching a verdict existed, and
- 4) whether the defendant's counsel was provided an opportunity to participate in the decision to declare a mistrial.

Landry, 600 A.2d at 102; see also Derby, 581 A.2d at 817; State v. McConvey, 459 A.2d 562, 567 (Me.1983); State v. Linscott, 416 A.2d 255, 260 (Me.1980).

2002 ME 59, ¶¶ 8-9, 794 A.2d at 85-86. The fact that neither the Law Court's disposition of

Hampe's appeal nor Torrie cite United States Supreme Court precedent does not mean that it is

contrary to clearly established federal law for purposes of § 2254(d)(1) review. See Mitchell v. Esparza, ___ U.S. ___, 124 S. Ct. 7, 10 (Nov. 3, 2003). Indeed, the United States Supreme Court has made it clear that "a state court need not even be aware of its precedents, 'so long as neither the reasoning nor the result of the state-court decision contradicts them.'" Id. (citing Early v. Packer, 537 U.S. 3, 8 (2002)).

The United States Supreme Court has made the following clear with respect to that attachment of jeopardy when a court makes the determination that a jury is deadlocked:

The case law dealing with the application of the prohibition against placing a defendant twice in jeopardy following a mistrial because of a hung jury has its own sources and logic. It has been established for 160 years, since the opinion of Justice Story in United States v. Perez, 9 Wheat. 579, 6 L.Ed. 165 (1824), that a failure of the jury to agree on a verdict was an instance of "manifest necessity" which permitted a trial judge to terminate the first trial and retry the defendant, because "the ends of public justice would otherwise be defeated." Id., at 580, 6 L.Ed. 165. Since that time we have had occasion to examine the application of double jeopardy principles to mistrials granted for reasons other than the inability of the jury to agree, whether the mistrial is granted on the motion of the prosecution, see Illinois v. Somerville, 410 U.S. 458 (1973), or on the motion of the defendant, see Oregon v. Kennedy, 456 U.S. 667 (1982); United States v. Dinitz, 424 U.S. 600 (1976). Nevertheless, we have constantly adhered to the rule that a retrial following a "hung jury" does not violate the Double Jeopardy Clause. Logan v. United States, 144 U.S. 263, 297-298 (1892). Explaining our reasons for this conclusion in Arizona v. Washington, 434 U.S. 497 (1978), we said:

"[W]ithout exception, the courts have held that the trial judge may discharge a genuinely deadlocked jury and require the defendant to submit to a second trial. This rule accords recognition to society's interest in giving the prosecution one complete opportunity to convict those who have violated its laws."

Id., at 509.

....

Justice Holmes' aphorism that "a page of history is worth a volume of logic" sensibly applies here, and we reaffirm the proposition that a trial court's declaration of a mistrial following a hung jury is not an event that terminates the original jeopardy to which petitioner was subjected. The Government, like the defendant, is entitled to resolution of the case by verdict from the jury, and jeopardy does not terminate when the jury is discharged because it is unable to agree. Regardless of the sufficiency of the evidence at petitioner's first trial, he has no valid double jeopardy claim to prevent his retrial.

Richardson v. United States, 468 U.S. 317, 323-326 (1984).

Juxtaposing the cautious and thorough analysis advanced by the Maine Law Court in Torrie with the cut-and-dry pronouncement in Richardson, I conclude with some ease that the Maine Law Court's disposition of Hampe's appeal does not run afoul of § 2254(d). Torrie and the Torrie guided outcome of Hampe's appeal are not contrary to Richardson; neither the reasoning nor the result of the state-court decision contradicts the Supreme Court's deadlocked jury/double jeopardy precedents. See Mitchell, 124 S. Ct. at 10.

The only claim that Hampe could advance with respect to the "unreasonable application" facet of § 2254(d)(1) is that, on the record before the Law Court, factually there was no basis for the conclusion that the jury was deadlocked. See Holland v. Jackson, ___ U.S. ___ 124 S.Ct. 2736, 2737 -38 (June 28, 2004) ("The 'unreasonable application' clause of § 2254(d)(1) applies when the 'state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.' Williams v. Taylor, 529 U.S. 362, 413 (2000). In this and related contexts we have made clear that whether a state court's decision was unreasonable must be assessed in light of the record the court had before it."(citations omitted). There is clearly record support for the factual conclusion that the jury was deadlocked. In a similar vein it cannot be said, under the deferential review of § 2254(d)(2), that

the state proceeding "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."

Miscellaneous Complaints

With respect to Hampe's scattershot allegations of infirmities, and putting aside some glaring concerns about whether Hampe adequately presented these issues to the state courts, see, e.g., Adelson v. DiPaola, 131 F.3d 259, 263 (1st Cir. 1997); Needel v. Scafati, 412 F.2d 761, 765 (1969), I have reviewed the transcripts of the second trial and can identify no due process infirmities in the trial court's attempts to conduct a trial with Hampe proceeding pro se who was attempting over and over again to inappropriately interrupt and interject. I can also identify no constitutional infirmity in the trial court's refusal to allow the introduction of Hampe's medical records on a theory of competing harm. (Hampe has also filed medical records and medical articles with his § 2254 pleadings, demonstrating the flavor of his competing harm theory.) Finally, Hampe's concern about the generic term used to describe his multiple motions on the court's docket is certainly of no constitutional moment.

Conclusion

For these reasons I recommend that the Court **DENY** Hampe 28 U.S.C. § 2254 relief from his state conviction.

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.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated July 14, 2004

HAMPE v. WARDEN, MAINE STATE PRISON et al

Assigned to: JUDGE JOHN A. WOODCOCK JR.

Referred to: MAG. JUDGE MARGARET J. KRAVCHUK

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

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

Date Filed: 03/29/04

Jury Demand: None

Nature of Suit: 530 Habeas Corpus
(General)

Jurisdiction: Federal Question

Plaintiff

HERBERT T HAMPE

represented by **HERBERT T HAMPE**
52629
MAINE STATE PRISON
807 CUSHING ROAD
WARREN, ME 04864
PRO SE

V.

Defendant

**WARDEN, MAINE STATE
PRISON**

represented by **CHARLES K. LEADBETTER**
ASSISTANT ATTORNEY
GENERAL
STATE HOUSE STATION 6
AUGUSTA, ME 04333-0006
626-8800
Email: charles.leadbetter@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DONALD W. MACOMBER
MAINE ATTORNEY GENERAL'S
OFFICE
STATE HOUSE STATION 6
AUGUSTA, ME 04333
626-8800
Email:
donald.w.macomber@maine.gov
ATTORNEY TO BE NOTICED

ATTORNEY GENERAL, MAINE

represented by **CHARLES K. LEADBETTER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DONALD W. MACOMBER
(See above for address)
ATTORNEY TO BE NOTICED