

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CLARENCE PEARSON,)	
)	
<i>Petitioner</i>)	
)	
v.)	Civil No. 97-389-P-H
)	
SUPERINTENDENT, MAINE)	
CORRECTIONAL CENTER,)	
)	
<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 the sentence imposed, based upon his guilty pleas, in the Maine Superior Court (Cumberland County) for assault, criminal threatening and criminal restraint. The judgment of conviction was entered on July 24, 1997. Petition (Docket No. 2) at 1. The petitioner asserts that his concurrent sentences of 15 months imprisonment and 4 years probation, added together, exceed the statutory maximum sentence of 5 years for a Class C crime, the highest classification level of the crimes to which he pleaded guilty. The respondent has moved to dismiss the petition and I recommend that the motion be granted.

I. Background

The petitioner pleaded guilty to the charges, violations of 17-A M.R.S.A. §§ 207 (assault,

Class C), 209 (criminal threatening, Class C),¹ and 302(1) (criminal restraint, Class D), on July 21, 1997. Docket Sheet, *State of Maine v. Clarence Pearson*, Docket No. CR-97-153, Maine Superior Court (Cumberland County), attached to Motion, at 2. The state court imposed a sentence of concurrent four year terms of imprisonment on the assault and criminal threatening counts, with all but 15 months suspended; 364 days imprisonment on the criminal restraint count, to be served concurrently with the term imposed on the other counts; and probation for a term of four years. Judgment and Commitment, *State of Maine v. Clarence Pearson*, Docket No. CR-97-153, Maine Superior Court (Cumberland County), attached to Motion, at 1.

On August 21, 1997 the petitioner filed a petition for post-conviction review in the Maine Superior Court (Cumberland County), in which he raised the issue that he presents in his petition to this court. Petition for Post-Conviction Review, *Clarence Pearson v. State of Maine*, Docket No. CR-97-1269, Maine Superior Court (Cumberland County), attached to Motion, at 1, 3-4. The Maine Superior Court dismissed that petition on September 23, 1997 on the ground that it failed to state a claim upon which relief could be granted. Post-Conviction Summary Dismissal Order, *Clarence Pearson v. State of Maine*, Docket No. CR-97-1269, Maine Superior Court (Cumberland County), attached to Motion, at 2. The petitioner filed a notice of appeal, and the Maine Law Court denied a certificate of probable cause by order dated November 21, 1997. Order Denying Certificate of Probable Cause, *Clarence Pearson v. State of Maine*, Docket No. Cum-97-576, Supreme Judicial

¹ Assault and criminal threatening are defined by statute as Class D crimes. They were charged against the petitioner as Class C crimes pursuant to 17-A M.R.S.A. § 1252(4-A), which raises the sentencing class by one level when the defendant has been convicted of two or more crimes violating Chapter 9 of Title 17-A within the previous ten years. The indictment of the petitioner recites two previous convictions for assault, a crime violating Chapter 9. Indictment, *State of Maine v. Clarence Pearson*, Docket No. CR-97-153, Maine Superior Court (Cumberland County), attached to Respondent's Motion to Dismiss ("Motion") (Docket No. 4), at 1.

Court Sitting as the Law Court, attached to Motion.

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)(A) 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 . . . have had an opportunity to pass upon the matter.” *Scarpa v. Dubois*, 38 F.3d 1, 6 (1st Cir. 1994) (finding this practice codified in section 2254).

Here, the respondent points out that the petitioner still may file a motion for correction or reduction of his sentence with the Maine Superior Court pursuant to M. R. Crim. P. 35, which allows such a motion to be brought up to one year after a sentence is imposed. This is an available procedure by which the petitioner may present the question presented in his petition to the Maine courts.

The fact that the petitioner has presented this question to the Maine courts through his petition for post-conviction relief might be construed to relieve him of the exhaustion requirement under the circumstances of this case, but this court need not reach that issue. A writ of habeas corpus is available under section 2254 only if the petitioner asserts 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 petitioner in this case alleges only a violation of state law.

With the exception of due process claims, state prisoners’ claims of error involving sentencing, parole, probation, and revocation of probation or parole are matters governed by state law that are not cognizable in federal habeas corpus proceedings.

Martin v. Solem, 801 F.2d 324, 331 (8th Cir. 1986). “A federal court may not issue the writ on the basis of a perceived error of state law.” *Pulley v. Harris*, 465 U.S. 37, 41 (1984). *See also King v. White*, 839 F. Supp. 718, 729 (C. D. Cal. 1993) (habeas corpus not available for challenge to consecutive nature of state sentences).

Accordingly, I conclude that the relief which the petitioner seeks is not available from this court.

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 27th day of January, 1998.

David M. Cohen
United States Magistrate Judge