

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOAN M. DeLUCA,)	
)	
Petitioner)	
)	
v.)	Docket No. 01-100-B
)	
STATE OF MAINE DEPARTMENT OF)	
CORRECTIONS,)	
)	
Defendant)	

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 the sentence imposed by the Maine Superior Court (Penobscot County) after a jury convicted her on a charge of operating a motor vehicle after revocation of her license to do so, in violation of 29-A M.R.S.A. § 2557. I recommend that the petition be denied.

I. Background

The petitioner was indicted on this charge on April 6, 1998. Indictment, *State of Maine v. Joan M. DeLuca*, Maine Superior Court (Penobscot County), Docket No. CR-98-181. She was convicted after a jury trial. Docket Record, *State of Maine v. Joan M. DeLuca*, Maine Superior Court (Penobscot County), at 3. The petitioner’s direct appeal from this conviction was denied by the Law Court in an unreported memorandum of decision. *State v. DeLuca*, Maine Supreme Judicial Court sitting as the Law Court, Dec. No. Mem 00-38 (Mar. 24, 2000). The petitioner then filed a petition for post-conviction review which was denied by the state trial court. Docket Record, *Joan M. DeLuca v.*

State of Maine, Maine Superior Court (Penobscot County), Docket No. BANSC-CR-2000-00680, at 1-2. The Law Court declined to issue a certificate of probable cause to appeal, Order Denying Certificate of Probable Cause, *DeLuca v. State*, Maine Supreme Judicial Court sitting as the Law Court, Docket No. Pen-01-140 (Apr. 18, 2001), foreclosing any further action in state court. The petition was filed in this court on May 21, 2001. Docket.

II. Discussion

The petition presents four grounds for relief. The first two grounds assert that the statute under which the petitioner was convicted, 29-A M.R.S.A. § 2557, is unconstitutional. Petition Under 28 USC § 2254 for Writ of Habeas Corpus by a Person in State Custody (“Petition”) (Docket No. 1) at 5. The first ground appears to contend that actual notice of license revocation must be received by the defendant in order for a conviction to pass constitutional muster. *Id.* The second ground asserts that the state was not required to prove beyond a reasonable doubt that her license had been revoked because she never actually received notification, a variant on the first argument. *Id.* The third ground asserts that the trial court improperly allowed the prosecutor to cross-examine the petitioner about two prior convictions that resulted in licenses suspensions. *Id.* at 6. The fourth ground faults the trial court for refusing to allow the petitioner to present the competing harms defense to the jury. *Id.* These grounds are essentially the same as those presented in DeLuca’s state petition for post-conviction review. Petition for Post-Conviction Review, *Joan M. DeLuca v. State of Maine*, Maine Superior Court (Penobscot County), Docket No. BANSC-CR-2000-00680, at 3-4. These issues were also presented in the petitioner’s direct appeal to the Law Court. Brief of Defendant/Appellant Joan M. DeLuca, *State v. DeLuca*, Law Court Docket No. Pen-98-702, at i, 4-9.

The statute under which the petitioner was convicted provides, in relevant part:

A person commits a crime . . . if that person operates a motor vehicle on a public way . . . when that person's license to operate a motor vehicle has been revoked under this subchapter and that person:

- (A). Has received written notice of the revocation from the Secretary of State;
- (B). Has been orally informed of the revocation by a law enforcement officer;
- (C). Has actual knowledge of the revocation; or
- (D). Is a person to whom written notice was sent in accordance with section 2482

29-A M.R.S.A. § 2557(1). Section 2482 provides that the secretary of state shall immediately notify a person, in writing, when his or her license has been suspended or revoked, by mailing a notice to the person's last known name and address or by serving in hand. 29-A M.R.S.A. § 2482. The petitioner does not claim that the secretary of state did not send such a notice to her, but only that she did not receive it and had no knowledge of it. Petition at 5.

Relief is available pursuant to 28 U.S.C. § 2254 under limited circumstances. For purposes of the pending petition, the court may not grant habeas corpus relief

with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the 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). The petition cannot reasonably be interpreted to invoke alternative (2).

Habeas corpus relief is not available to remedy a perceived error of state law. 28 U.S.C. § 2241(c); *Pulley v. Harris*, 465 U.S. 37, 41 (1984); *Puleio v. Vose*, 830 F.2d 1197, 1204 (1st Cir. 1987). The third and fourth grounds for relief asserted by the petitioner cannot reasonably be construed to allege anything other than an error of state law. Because they fail to raise claims under federal law, the petitioner is not entitled to habeas corpus relief on those claims.

The first and second grounds for relief asserted by the petition are sufficiently similar that they may be considered together. The Maine Law Court has held that the fact that section 2557 does not require actual receipt of notice of license revocation does not render the statute unconstitutional under state or federal law. *State v. Lamarre*, 553 A.2d 1260, 1262 (Me. 1989); *State v. Kovtuschenko*, 521 A.2d 718, 719 (Me. 1987). The petitioner does not identify any provision of the Constitution that she contends is violated by this provision of the state statute, nor does she identify any other clearly established federal law that she claims is contrary to this state provision. The materials filed by her counsel in the state post-conviction proceeding, who also represents her here, mention only an alleged due process violation in this regard. Memorandum of Petitioner Joan M. DeLuca, *DeLuca v. State*, Maine Supreme Judicial Court, Docket No. Pen-01-140, at [2]-[3].

The Supreme Court established the constitutional due process requirement for notice in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

* * *

The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected

Id. at 314-15. It found that notice by mail to those with record addresses was required. *Id.* at 318. In *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), the Supreme Court held that “[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party . . . if its name and address are reasonably ascertainable.” *Id.* at 800 (emphasis in original). The petitioner does not

suggest that this constitutional minimum standard was not met in this case. My research has located no further legal requirements imposed in this context by federal statute or case law. Nothing further was constitutionally required. The petitioner received all the process that was due when the notice was mailed in accordance with the statute. Contrary to the petitioner's argument in the second ground of her petition, the state was not relieved of its burden to prove beyond a reasonable doubt that her license had been revoked merely because the statute allowed the state to prove notice of that status by establishing that notice had been mailed to the address she had given when she obtained the license. To the extent that this argument may be construed to contend that actual notice is constitutionally required, the Supreme Court cases discussed above strongly suggest that such is not the case, and I agree with the analysis of the Maine Law Court and other state courts, *see, e.g., Townsend v. Dollison*, 421 N.E.2d 146, 147-48 (Ohio 1981), that conclude that there is no such federal constitutional requirement.

No other potential constitutional violation is apparent on the face of the statute. The Law Court's adjudication of the petitioner's constitutional claim was neither contrary to nor involved an unreasonable application of clearly established federal law.

III. Conclusion

For the foregoing reasons, I recommend that the petition for a writ of habeas corpus be **DENIED.**

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.

Date this 3rd day of August, 2001.

David M. Cohen
United States Magistrate Judge

JOAN M DELUCA ROBERT M. NAPOLITANO
plaintiff 774-4109
 [COR LD NTC]
 765 CONGRESS STREET
 PORTLAND, ME 04102

v.

ME DEPT OF PROBATION & PAROLE JOSEPH WANNEMACHER
defendant [COR LD NTC]
 ASSISTANT ATTORNEY GENERAL
 STATE HOUSE STATION 6
 AUGUSTA, ME 04333-0006
 626-8800