

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ROBIN ANDERSON,)
)
 Petitioner)
)
 v.) Civil No. 01-161-B-S
)
 WARDEN, MAINE)
 DEPARTMENT OF CORRECTIONS)
)
 Respondent)

***RECOMMENDED DECISION ON 28 U.S.C. § 2254 PETITION FOR WRIT OF
HABEAS CORPUS***

Robin Anderson seeks habeas corpus relief in this court pursuant to 28 U.S.C. § 2254 following his conviction by a jury for the crime of sexual abuse of a minor in violation of 17-A M.R.S.A. § 254 (1)(A) and (3)(A). The State of Maine has filed a motion to dismiss. I now recommend that the court **DISMISS** the petition.

Factual Background

On October 20, 2000, following a three day trial, a jury found Anderson guilty as charged in connection with the sexual abuse of a teenage girl under the age of sixteen. Approximately two weeks later the court sentenced Anderson to a three-year term of imprisonment with all but eight months suspended, followed by a four-year period of probation with special conditions. One of the special conditions is that Anderson must

have “no contact direct or indirect w[ith] any persons under 16 y[ears] of age except his children.” (J. & Commitment at 2.)¹

Following the entry of judgment on November 1, 2000, Anderson did not take a direct appeal pursuant to 15 M.R.S.A. § 2115 (West Supp. 2000) nor did he file an application to allow an appeal of sentence pursuant to 15 M.R.S.A. § 2151 (West Supp. 2000). Instead, on May 9, 2001, he filed a pro se petition for post-conviction review in state court. Therein Anderson alleged two grounds for relief, both aimed at the perceived constitutional infirmities of the special condition of his probation limiting his contact with children. Anderson argued that the condition violated the due process clause of the United States Constitution and also that it deprived him of his “right of association” guaranteed under the First Amendment.

The assigned justice of the superior court summarily dismissed the petition because it was “not a proper ground for post-conviction review.”² A single justice of the Law Court denied a certificate of probable cause following Anderson’s filing of a timely notice of appeal. Anderson then filed this federal habeas petition alleging the same constitutional violations as raised in his state court post-conviction and adding a further allegation that the probation condition violated his constitutional right to equal protection under the law. I issued a modified order to answer, allowing the State, if it chose, to respond to the petition with a motion to dismiss. It elected to do so and the court now has that motion to dismiss before it.

¹ Anderson was also ordered to serve an additional seven months pursuant another sentence for other apparently unrelated charges. The instant sentence was ordered to be served consecutively to that sentence.

² In summarily dismissing the petition the court stated that Anderson was challenging a bail condition rather than a condition of probation. The State urges that I ignore this misstatement because it is an obvious “unintended mischaracterization.”

Discussion

The State presents two distinct arguments in support of its motion to dismiss: as to the equal protection claim Anderson failed to raise that issue in state court and has therefore failed to exhaust his remedies and as to the other two claims of constitutional error, Anderson failed to comply with a state procedural rule and is therefore barred from raising those claims in this court.

1. Failure to Exhaust

In order to bring a claim under 28 U.S.C. § 2254 a petitioner must first present the claim to the state court for its consideration. Section 2254(b)(1)(A) provides that the court cannot grant a petition for habeas corpus unless the state prisoner has “exhausted the remedies available in the courts of the [s]tate” § 2254(b)(1)(A). To meet this requirement Anderson must show that he offered the federal claim to the state court in such a way “as to make it probable that a reasonable jurist would have been alerted to the existence of the federal question.” See Adelson v. Dipaola, 131 F.3d 259, 262 (1st Cir. 1997) (quoting Scarpa v. DuBois, 38 F.3d, 1, 6 (1st Cir. 1994)).

Anderson’s state court petition for post-conviction review is clear, concise, and offers two constitutional grounds: an alleged violation of the due process clause and an alleged violation of First Amendment rights of association. He does not mention an equal protection argument. Thus he has not exhausted that claim in the state courts because it has never even arguably been presented to any state court. The Supreme Court and the First Circuit have left no doubt that a petitioner seeking federal habeas review must first exhaust 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.”); Adelson, 131 F.3d at 261-62 (“With few exceptions ... federal courts have enforced the exhaustion requirement consistently and rigorously.”). The State’s motion to dismiss should be granted as to this claim.

2. Adequate and Independent State Ground

Anderson’s other two claims present a different issue. The State urges that this court should summarily dismiss them as well based upon the doctrine of “adequate and independent state ground.” Federal courts “will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.” Coleman v. Thompson, 501 U.S. 722, 729 (1991). Noncompliance with a state procedural rule may preclude federal review. See McCambridge v. Hall, ___F.3d ___, 2001 WL 1097770, *10 (1st Cir. Sept. 24, 2001).³

Under Maine Rules of Criminal Procedure a summary dismissal of a state post-conviction petition is warranted under Rule 70(b) “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petition fails to show subject matter jurisdiction or to state a ground upon which post-conviction relief can be granted.” Me. R. Crim. P. 70(b). Pursuant to Maine law errors that might have been claimed on direct appeal (whether an appeal is in fact taken or not) are deemed “waived” in collateral state post-conviction proceedings unless the failure to raise those issues on direct appeal is

³ “For a state procedural rule to constitute an adequate and independent state ground barring federal habeas review, that rule must be consistently enforced in the state courts.” Id.

“excusable” and the errors “may result in reversal of the criminal judgment.” 15 M.R.S.A. § 2128(1) (West Supp 2000). Any error vis-à-vis conditions of probation appears plainly on the sentencing record and can be reviewed without post-conviction proceedings. The State cites to a series of Maine cases supporting the proposition that claimed errors relating to the terms of a special condition of probation are appropriately addressed on direct appeal or sentence appeal rather than through post-conviction review. See State v. Collins, 681 A.2d 1168, 1170 (Me. 1996); see, e.g., State v. Nolan, 2000 ME 165, 759 A.2d 721; State v. King, 1997 ME 85, 692 A.2d 1384;; State v. Coreau, 651 A.2d 319 (Me. 1994).

Anderson never took an appeal, but filed his post-conviction petition instead. It was summarily dismissed, albeit with a reference to a bail condition, with the notation “[t]his is not a proper ground for post-conviction review.” Given the clarity of Maine law on this issue the State contends that the order of summary dismissal and the subsequent Law Court order denying a certificate of probable cause both “unambiguously reli[ed] on this procedural ground to deny relief and [did] not reach [] the claims on their merits.” With some reservation, I concur with the State that the court must have been relying upon the 15 M.R.S.A. § 2128(1) in summarily dismissing the claim.⁴ To better assure the

⁴ My reservation is this: While federal courts have long recognized a duty of comity towards the state courts when undertaking habeas review of final state orders, state prosecutors do not always appreciate that adherence to this duty of comity depends on the state court’s clarity when disposing of what might become a federal habeas claim. The State blithely suggests in its memorandum that Anderson could have obtained a clarification from the superior court justice given the obvious misstatement in the original order. If such a mechanism is available in the state’s courts perhaps the State might have availed itself of this process. The State’s less than consistent arguments about state procedural rules and its failure to urge the state courts to address questions that may later arise in a federal habeas undercut this court’s ability to rely upon an adequate and independent state ground as a basis for denying federal habeas review. See, e.g., Gray v. Rowe, 2001 WL 1150724 (D. Me. 2001) (treating a habeas petition that was marred by the State’s inconsistent position taken in the state and federal courts with respect to the petitioner’s compliance with the state’s statute of limitation for seeking post-conviction review and the appropriateness of equitable tolling); see also Gray v. Maine Att’y Gen., 2001 WL 484047 (D. Me. 2001). Judge Lipez’s comments in McCambridge, 2001 WL 1097770, at *10, should provide a wake-up call not only to this court but to the

finality of its judgment the order of summary dismissal should have stated that the dismissal was based upon the fact that the claimed error should have been raised on direct appeal and was therefore waived pursuant to 15 M.R.S.A. § 2128(1). However since Anderson manifestly defaulted his claim in the state courts by failing to pursue an appeal and because it would be hard to state with a straight face that any other reason animated the state court's notation "[t]his is not a proper ground for post-conviction review," I concluded that this was the disposition intended by the summary dismissal.

In Coleman v. Thompson the United States Supreme Court explained the limited avenue for relief from a procedural default of federal habeas claims in the state courts:

In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.

501 U.S. at 750. The Court further stressed the federal courts must not "undervalue[] the importance of state procedural rules," id. at 750, by relieving defaulted state habeas petitioners of their default. Id. at 744-45. Relief from these defaults must only be provided if the petitioner meets the cause and prejudice standard.⁵ Anderson has not raised any facts in this court that would begin to meet these standards.

Conclusion

Based upon the foregoing I recommend that the court grant the State's motion to dismiss and **DISMISS** the petition.

state prosecutors who are often called on to defend the state court's judgment in this court. The finality of state court judgments will better be served by a proactive approach by the prosecutors while the state proceedings are underway to help assure that the grounds for disposition are tangible and need not be divined by the federal courts.

⁵ This standard is a hard standard for the federal habeas petitioner to meet, serving as it does "the important interest in finality served by state procedural rules, and the significant harm to the States that results from the failure of federal courts to respect them." Id. at 750.

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.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated October 12, 2001

ADMIN

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 01-CV-161

ANDERSON v. CORRECTIONS, ME WARD Filed: 08/10/01
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Demand: \$0,000 Nature of Suit: 530
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Dkt# in other court: None

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

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