

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BASIL BARNES, JR.)
)
 Petitioner)
 v.) Civ. No. 02-55-B-S
)
 JEFFERY MERRILL,)
 WARDEN, MAINE STATE PRISON)
)
 Respondent)

RECOMMEND DECISION ON 28 U.S.C. § 2254 PETITION

Petitioner Basil Barnes, seeking relief in this court pursuant to 28 U.S.C. § 2254, alleges that his state court conviction was obtained in violation of his federal rights. (Docket No. 1.) I now recommend that the court **DENY** the petition.

Background

On February 16, 2000, Basil Barnes was convicted of one count of Class A gross sexual assault and one count of Class C unlawful sexual contact following a jury trial. On April 28, 2000, the trial justice sentenced him to eighteen years all but fourteen years suspended on the first count and a concurrent sentence of four years on the second charge. An appeal to the Maine Supreme Judicial Court sitting as the Law Court ensued. On March 27, 2001, the Law Court affirmed the convictions, Maine v. Barnes, 2001 ME 51, 768 A.2d 596, concluding, inter alia, that the trial court's denial of Barnes's pretrial motion to suppress was proper. On March 20, 2002, Barnes filed this timely petition for writ of habeas corpus raising the two issues raised by his motion to suppress: his statement to law enforcement officers was obtained in violation of his federal

constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966) and his statement was involuntary. The State concedes that the petition is timely under 28 U.S.C. § 2244(d)(1)(A) and that these claims were raised in state court with sufficient clarity to satisfy the statutory exhaustion doctrine found at 28 U.S.C. § 2254(b)(1)(A).

Discussion

Under the Antiterrorism and Effective Death Penalty Act (“AEDPA”) any properly raised constitutional claim that was addressed on its merits by the state court must be reviewed deferentially by this court and rejected only if it is “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1); see also Watkins v. Murphy, __ F.3d __ 2002 WL 1248271, *6 n.3 (1st Cir. June 11, 2002). In this case both of the grounds that Barnes raises in this court were decided on their merits by the Maine Law Court, compare Watkins, 2002 WL 1248271, * 4, and on both issues there was no constitutional infirmity within the meaning of § 2254 (d)(1) in that Court’s ruling.

A. The Miranda Issues

Barnes claims that his conviction was obtained by the use of a confession in violation of the rule of Miranda because the officer who conducted the interview failed to obtain a knowing and voluntary waiver of Miranda rights from Barnes. Barnes was interviewed by Detective Roscoe Scott of the Maine State Police and Dennis Dix of the Maine Department of Human Services (DHS) on December 17, 1997, at the Lovejoy Health Center in Albion, Maine. Initial reports of the alleged criminal conduct involving “inappropriate touching” of a minor child came to the attention of the DHS and the police through Barnes’s estranged wife, Rachel Butler Barnes. Dix contacted Barnes and asked

him to come to Lovejoy Health Center for an interview. Barnes went to the Health Center where he was interviewed by Scott in the presence of Dix, who also participated in the conversation. The entire interview was recorded.

The meeting began with the following exchange:

SCOTT: Okay, first I'll start off by explaining. I don't know if I introduced myself properly. As you heard me say, when we started out, I am from the State Police, he's from the Department of Human Services. We are talking with you together, which is not an uncommon thing for Human Services and the police to do in cases where some allegations of some inappropriate things have been made, and we're just trying to find out, you know, everybody's side of the story, and all sides, you know, what everybody has to say about the situation and he makes an assessment and I bring information to the District Attorney and we determine if any criminal conduct has gone on. We do this together because a lot of the information that we are looking for is the same information; so rather than having to track you down twice and put you through the inconvenience of separate interviews, we do it together at the same time, okay?

Now, you're not under arrest and I want you to understand that. Do you understand that you are not under arrest?

BARNES: Right.

SCOTT: Okay. You are free to go anytime that you want to. The door is not locked. We do have it closed; the sliding door is closed for privacy, it is not locked. Your quickest exit is just an immediate left and that door is not locked. You can leave whenever you want to. Okay? Do you understand that?

BARNES: Yup.

SCOTT: Okay, Uh, before I do start talking to you, I just want to explain to you what your rights are so that I know that you understand that you do not have to talk to us and that you're willing to do if that is the case, okay? I am just going to read the rights off the card that we have.

(Barnes Interview Tr. at 1-2.) Scott then read Barnes his rights, pausing after each sentence to inquire whether Barnes understood. (Id. at 2.)

After completing his recitation of the Miranda rights, and receiving affirmative replies from Barnes concerning his understanding of those rights, the following exchange occurred:

SCOTT: Okay. If you decide to answer questions now, with or without a lawyer present, you have the right to stop answering at any time or to stop answering at any time until you can talk to a lawyer. Do you understand that?

BARNES: Yup.

SCOTT: Is there anything you have any questions about?

BARNES: Nope, not really.

SCOTT: Okay, do you wish to answer questions?

BARNES: Probably.

(Id.)

Thereafter conversation ensued, the transcription of which stretches twenty-nine pages. At the conclusion of the interview Barnes left the Health Center unhindered. There is no further mention in the transcript about an attorney nor is there any indication that Barnes indicated a desire to stop speaking during the interview.

Barnes argues in Ground One of his § 2254 petition that this court should grant the petition “because of the absence of a clear and voluntary waiver of Mr. Barnes’ Miranda rights.” He raised the same issue on direct appeal and the Law Court addressed his argument in the following manner:

Contrary to defendant's contentions, the court did not err in its determination that, despite the officer reading defendant the Miranda warnings, defendant was not in custody and thus not entitled to the warnings. See State v. Bragg, 604 A.2d 439, 440 (Me.1992). Moreover, the giving of Miranda warnings when not required does not per se necessitate a determination whether defendant knowingly and voluntarily waived the rights described in the warning before questioning can proceed. See id. In any event, as with the court's determination concerning custody, its determination that defendant made a knowing and voluntary waiver of the rights was properly supported by its findings. See State v. Thibodeau, 2000 ME 52, ¶ 11, 747 A.2d 596; State v. Coombs, 1998 ME 1, ¶ 13, 704 A.2d 387.

Barnes, 2001 ME 51, ¶ 4, 768 A.2d at 597.

Although the Law Court cited to state case law, its analysis fell within the parameters of the federal constitutional rules set forth, for instance, in Miranda, 384 U.S. 436, which requires a state to establish by preponderance of evidence that a knowing, intelligent, and voluntary waiver of rights preceded custodial interrogation, and North Carolina v. Butler, 441 U.S. 369 (1979), that provided that an express or oral or written

waiver of Miranda rights is not required.¹ Barnes's conduct and his statements during the totality of the interview support the finding that he had waived his rights under Miranda.

Furthermore the Law Court's alternative holding, that the interview was noncustodial and therefore not governed by the Miranda rule at all, likewise is a reasonable application of United States Supreme Court precedent. See Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (police are required to give Miranda warnings only if there has "been such a restriction on a person's freedom as to render him 'in custody'"); California v. Beheler, 463 U.S. 1121, 1121 (1983) ("Miranda warnings are [not] required if the suspect is not placed under arrest, voluntarily comes to the police station, and is allowed to leave unhindered by police after a brief interview.>").

Barnes testified at the suppression hearing that the gratuitous administration of Miranda warnings caused him to subjectively believe he was in custody and not free to leave. The trial justice concluded that the interview, based on all the circumstances, was noncustodial. The defendant's subjective belief is not a factor that necessarily transforms a noncustodial interrogation into a custodial one. Berkemer v. McCarty, 468 U.S. 420, 441-42 (1984) ("[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation."); see also Maine v. Thibodeau, 475 U.S. 1144, 1146 (1986) (Burger, C.J., dissenting from denial of writ of certiorari) (arguing that the Supreme Court should undertake plenary review of the Maine Law Court's "in

¹ In State v. Durepo, 472 A.2d 919 (Me. 1984) the Law Court stated: "This Court has never adopted an equivalent to the Miranda rule or held that a violation of the Miranda safeguards requires application of an exclusionary rule as a matter of state constitutional law." Id. at 922 n.5. Although footnote 5 continues by noting that the Miranda procedural safeguards are not themselves protected by the Constitution, a statement rejected by the United States Supreme Court in Dickerson v. United States, 530 U.S. 428 (2000), the basic premise that any discussions of issues raised under Miranda remains solely federal in nature is unchanged. In Dickerson the Supreme Court unequivocally held that pre-interrogation Miranda warnings, or their equivalent, are a constitutional entitlement grounded in the Fifth Amendment and not merely a "prophylactic standard" or rule of procedure as some post-Miranda decisions had intimated. 530 U.S. at 441.

custody” determination in light of the fact, among others, that it “eschewed [the] objective test, substituting instead the ‘subjective belief of the defendant.’”). Nothing in the Law Court’s opinion regarding Miranda issues resulted in a decision that was contrary to, or involved an unreasonable application of federal law under United States Supreme Court precedent.

B. The Voluntariness of the Statements

Barnes also asserts that the Maine Law Court erred when it found his statements voluntary because, in fact, those statements were obtained as a result of a promise of leniency made by the interrogating officer. Barnes cites to fourteen different situations during the course of the interview where he maintains Scott suggested that he should “fess up” because “if you want to be able to deal with it and help yourself out, you’ve got to let it out.” The statements he cites, in addition to the quotations noted above, range from “you would like to be able to take responsibility for it. Is that right?” to “Just do your best. You’re doing great.” (See Pet’n Mem. at 7-9 (chronologically listing the statements).)

In Barnes’s view the detective’s exhortations rendered his statements involuntary because they contained promises of leniency. Involuntary statements are inadmissible under the Fifth Amendment requirement that no person can be compelled to be a witness against himself in a criminal case. Bram v. United States, 168 U.S. 532, 542 (1897). Whether the analysis is made pursuant to the Fifth or the Fourteenth Amendment, the standard for admitting a confession is the same and it applies in both state and federal prosecutions. Malloy v. Hogan, 378 U.S. 1, 9 (1964). The constitutional inquiry is whether the confession was “free and voluntary;” it “must not be extracted by any sort of

threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.” Bram, 168 U.S. at 542-543 (quotation and attribution omitted). The burden is on the government to prove that the defendant’s statements were voluntary by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477, 489 (1972). The government must show that, based on the totality of the circumstances, the investigating agents neither “broke” nor overbore the defendant’s will. Chambers v. Florida, 309 U.S. 227, 239-40 (1940). As this language suggests, “coercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary.’” Colorado v. Connelly, 479 U.S. 157, 167 (1986).²

In deciding the voluntariness issue, Maine’s highest court determined that the trial court had been correct when it concluded that there was neither a promise of leniency nor any coercion on the detective’s part. The Law Court described the officer’s comments as in the nature of exhortations to tell the truth rather than promises of prosecutorial leniency. Barnes, 2001 ME 51, ¶5, 768 A.2d at 597. This characterization of the officer’s comments is a fair one and its conclusion is in accord with United States Supreme Court precedent. Admonitions or exhortations to tell the truth will not, alone,

² Article I, § 6 of the Maine Constitution is more protective of a defendant’s rights in the voluntariness context than are the Fifth and Fourteenth Amendments to the United States Constitution. The Maine Constitution requires the State to establish voluntariness beyond a reasonable doubt. State v. Collins, 297 A.2d 620, 627 (Me. 1972). Furthermore the Maine Law Court does not require proof of police coercion as a necessary prerequisite to an involuntariness finding. State v. Rees, 2000 ME 55, ¶ 1, 748 A.2d 976, 977. A necessary component of the due process clause is that an accused’s confession must be voluntary if it is to be admitted at trial. See State v. McConkie, 2000 ME 158, ¶ 9, 755 A.2d 1075, 1078. Maine’s notion of “voluntariness” incorporates a traditional due process analysis focused upon the confession under examination that has to be proven beyond a reasonable doubt to be “the product of a rational intellect and a free will,” Blackburn v. Alabama, 361 U.S. 199, 208 (1960), free from the taint of interrogation tactics or other government actions that are improper in the particular circumstances. In addition, “voluntariness” under Maine case law carries with it the notion that the statement has not been “compelled” by any improper motivation from within the defendant himself. Thus under Maine law a defendant’s senile dementia can provide a constitutional basis for the exclusion of his statement. Those sorts of concerns are not implicated by this case because clearly Barnes’s only argument is that the detective’s interrogation technique was premised upon an improper promise of leniency and it was that promise that caused the statement to be other than the product of free will and rational intellect.

render a confession involuntary. Crooker v. California, 357 U.S. 433, 437 (1958), limited on other grounds by Escobedo v. Illinois, 378 U.S. 478, 492 & n.15 (1964). Barnes has shown no entitlement to habeas relief in this court.

Conclusion

Based upon the foregoing I recommend that the court **DENY** the petition.

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 June 14, 2002

ADMIN

U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 02-CV-55
BARNES v. CORRECTIONS, ME COMM
03/25/02
Assigned to: Judge GEORGE Z. SINGAL
Demand: \$0,000
Lead Docket: None
Question
Dkt# in other court: None
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Filed:
Nature of Suit: 530
Jurisdiction: Federal

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