

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RASHEED MILLER )  
 ) Civil Action  
 v. )  
 ) No. 01-6445  
JOSEPH CHESNEY, ET AL )

**MEMORANDUM**

**Padova, J.** **March** , **2002**

Petitioner, Rasheed Miller, a state prisoner incarcerated at the State Correction Institute in Frackville, Pennsylvania, filed the instant pro se Petition for Writ of Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2254. In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule of Civil Procedure 72.1, this Court referred the Petition to United States Magistrate Judge Peter B. Scuderi for a Report and Recommendation. The Magistrate filed a Report and Recommendation recommending that the Court deny both of the claims raised in the Petition. Petitioner filed a timely objection. For the reasons that follow, the Court overrules Petitioner's objection, adopts the Report and Recommendation, and dismisses the Petition with prejudice.

**I. Standard of Review**

Where a habeas petition has been referred to a magistrate judge for a report and recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection

is made. . . . [The Court] may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b) (1994).

## **II. Discussion**

The Petition raises two potential grounds for habeas relief.<sup>1</sup> The Court will consider each claim in turn.

### **A. Claim One: Coerced Confession**

Petitioner's first claim is that his conviction was invalid because it was based on a coerced confession that was obtained in violation of Pennsylvania's six-hour rule.<sup>2</sup> The Magistrate concluded that the claim was barred because it was unexhausted and procedurally defaulted. Examining the claim, the Magistrate concluded that Petitioner had failed to raise the claim in the state courts. He noted that although Petitioner raised a variant of the claim - couched in terms of ineffective assistance of trial counsel - in the Post-Conviction Relief Act ("PCRA") proceeding, the claim as presented in the instant Petition was not "fairly

---

<sup>1</sup>Petitioner was convicted by a jury in the Court of Common Pleas of Philadelphia County on December 1, 1994, in connection with two robberies of businesses in Philadelphia. He was sentenced to an aggregate term of 52 1/2 to 105 years incarceration. The Magistrate's Report and Recommendation contains a full recitation of the procedural history of Petitioner's case.

<sup>2</sup>Under the six-hour-rule, statements obtained more than six hours after an arrest should be suppressed to guard against the coercive influence of custodial interrogation. See Commonwealth v. Davenport, 370 A.2d 301, 306 (Pa. 1977).

presented" to the state courts, and was therefore unexhausted.

(Mag.'s Rep't. & Rec. at 6.) Petitioner objects as follows:

Petitioner raise [sic] a claim of violation of the six-hour rule. The Judge found that this claim was unexhausted. That is because Petition didn't raise ineffective assistance of counsel with the six-hour rule, which was exhausted. The reason why Petition didn't raise ineffective [assistance] with this issue is because the habeas [sic] corpus Petition says you can't raise an ineffective [assistance] during post-trial proceedings [claim], and this was a post-trial proceeding issue.

(Pet.'s Obj. to Mag. Rep't. & Rec.) Petitioner's objection misinterprets the Magistrate's opinion. The Magistrate did not suggest to Petitioner that he should have brought an ineffective assistance of PCRA counsel claim in the instant Petition. Rather, the Magistrate simply examined the state proceedings in an effort to determine whether Petitioner's instant claim was ever "fairly presented" to the state courts.

Examining Petitioner's first claim de novo, it is clear that Petitioner failed to raise this same claim in the state courts. The only claim litigated in the state courts bearing any similarity to Petitioner's first claim here was Petitioner's claim of ineffective assistance of trial counsel for failure to move to suppress the confession. See Commonwealth v. Miller, No.2383 EDA 1999, J. S45020/00, at 3 (Pa. Super. Ct. Jan. 3, 2001) (affirming denial of PCRA Petition). Petitioner has failed to meet his burden of demonstrating that the claims were fairly presented to the state

court. See Santana v. Fenton, 685 F.2d 71, 73-74 (3d Cir. 1982), cert. denied, 459 U.S. 1115 (1983). Because the first claim was not fairly presented to the state court, it is not exhausted.

Furthermore, the claims should be dismissed outright because the claim is now procedurally barred under state law.<sup>3</sup> See Werts v. Vaughn, 228 F.3d 178, 192 (3d Cir. 2000); Carter v. Vaughn, 62 F.3d 591, 595 (3d Cir. 1995). Nor does Petitioner meet the requirements of exception to this rule, either by demonstrating cause or demonstrating that dismissal of the claims will result in a fundamental miscarriage of justice. See Coleman v. Thompson, 501 U.S. 722, 750 (1991). Petitioner fails to establish, either in his Petition or his objections, cause sufficient to meet the high burden under these exceptions. See Caswell v. Ryan, 953 F.2d 853, 862 (3d Cir. 1992).

The Court overrules Petitioner's objection and adopts the Report and Recommendation with respect to Petitioner's first claim. Petitioner's first claim is dismissed.

---

<sup>3</sup>Petitioner's only option for raising this claim would be to file another PCRA petition; however, such a collateral action would be time-barred. See 42 Pa. Cons. Stat. Ann. § 9545(b) (West 1998). Petitioner's conviction became final more than four years ago, and so he would not be able to bring such a PCRA application unless he met one of the three exceptions articulated in the statute. Petitioner fails to allege any circumstances indicating he could meet any of these exceptions.

B. Claim Two: Fourth Amendment

Petitioner's second claim is that the trial court violated his Fourth Amendment right to be free of unreasonable searches and seizures, because it failed to suppress certain evidence seized after his girlfriend consented to a search of their bedroom. The Magistrate concluded that the claim was barred because Petitioner had a full and fair opportunity to litigate the claim in state Court. Petitioner did not object to this portion of the Report and Recommendation.

"[W]here the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." Stone v. Powell, 428 U.S. 465, 494 (1976) (footnote omitted). "Even otherwise potentially meritorious Fourth Amendment claims are barred on habeas [review] when the petitioner had a full and fair opportunity to litigate them." Deputy v. Taylor, 19 F.3d 1485, 1491 (1994). Here, Petitioner does not even claim he was denied an opportunity to present and argue his Fourth Amendment claim. The Court is barred from reviewing Petitioner's second claim. Accordingly, the Court adopts the Report and Recommendation as to Petitioner's second claim, and dismisses the claim.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RASHEED MILLER )  
 ) Civil Action  
 v. )  
 ) No. 01-6445  
JOSEPH CHESNEY, ET AL. )

**ORDER**

**AND NOW**, this day of March, 2002, upon careful and independent consideration of the Petition for Writ of Habeas Corpus (Doc. No. 1), after review of the Report and Recommendation of Magistrate Judge Peter B. Scuderi, and in consideration of Petitioner's Objection to the Magistrate's Report and Recommendation and all responses thereto, **IT IS HEREBY ORDERED** that:

1. Petitioner's Objection is **OVERRULED**.
2. The Report and Recommendation is **APPROVED** and **ADOPTED**.
3. The Petition is **DISMISSED** with prejudice in its entirety.
4. There is no basis for the issuance of a certificate of appealability.

BY THE COURT:

---

John R. Padova, J.