

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

ANTHONY McKNIGHT,
Petitioner

CIVIL ACTION

v.

WALTER P. DUNLEAVY, et al.,
Respondents

No. 01-6144

MEMORANDUM AND ORDER

McLaughlin, J.

October 23, 2002

Before this court is a pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2241. The petition was filed by the petitioner, Anthony McKnight, while awaiting trial in the Court of Common Pleas of Philadelphia County on charges of violating the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-113(a) (16) and (30) and criminal conspiracy, 18 Pa. C.S. § 903. Mr. McKnight was later tried and convicted on all charges on July 19, 2002. For the reasons set forth below, Mr. McKnight's petition is dismissed without prejudice for failure to exhaust state remedies.

I. Background

A. State Procedural History

On September 19, 2000 Mr. McKnight was arrested by

agents of the Pennsylvania Bureau of Narcotics Investigations. On November 30, 2000 a statewide investigating grand jury issued a presentment against Mr. McKnight and, on December 28, 2000, the Commonwealth obtained a warrant for Mr. McKnight's arrest. Mr. McKnight was arrested in North Carolina on January 3, 2001, waived extradition, and returned to Philadelphia on January 18, 2001. He was arraigned and his bail was set at \$300,000. Mr. McKnight appealed and his bail was reduced to \$250,000.

On January 25, 2001, a preliminary hearing was held and the Commonwealth was allowed to present hearsay testimony in support of the charges, over the objection of defense counsel. Mr. McKnight was ordered held for trial. On March 12, 2001, Mr. McKnight's bail was again reduced, after a hearing, to \$120,000

In the months that followed, Mr. McKnight filed numerous motions in the state court challenging the sufficiency and legality of the evidence against him. He pursued various discovery issues and made several efforts to have his bail reduced or his case dismissed.

Mr. McKnight's counsel filed a motion to further reduce his bail on May 17, 2001. On June 26, 2001 Mr. McKnight filed a pro se motion to obtain release on nominal bail or a dismissal of the charges against him based on Pa. R. Crim. P. 600(A)(2) and

(E)¹.

These two motions were denied by the trial court on August 2, 2001. The state judge hearing the motion refused to overrule a previous decision by a calendar judge that excluded various periods of time when determining how many days Mr. McKnight had been in custody. Based on the calculation that excluded these days, the state judge found that he had not been held for the requisite amount of time to be afforded relief under Rule 600.

Upon denial **of** his Rule 600 motion, Mr. McKnight filed a petition for a writ of habeas corpus in the Superior Court of Pennsylvania. That court denied his petition in a per curiam order on November 14, 2001.

Mr. McKnight has been represented by several different attorneys and has at times chosen to proceed *pro se* with standby counsel. Mr. McKnight was represented, by either counsel or standby counsel, at all times during his state court jury trial, which concluded in his conviction on all charges on July 19, 2002. His bail was revoked and on September 9, 2002 he was sentenced to an aggregate **prison** term **of** five to ten years.

¹Pennsylvania Rule of Criminal Procedure 600 allows a pretrial detainee to be released on nominal bail after 180 days in custody and to petition for a dismissal of his case if he is not tried within 365 days.

Mr. McKnight has filed a pro se post verdict motion for extraordinary relief which is still pending in the court of Common Pleas of Philadelphia County.

B. Mr. McKnight's Federal Habeas Corpus Petition

Prior to his conviction, on December 10, 2001, Mr. McKnight filed his initial petition with this Court for a writ of habeas corpus. A supplemental petition was filed on December 11, 2001, and an amended supplemental petition was filed on January 4, 2002.

On May 28, 2002, Chief Magistrate Judge Melinson issued a report and recommendation to this Court, recommending that Mr. McKnight's petition be dismissed without prejudice for failure to exhaust state court remedies. The next day, Mr. McKnight filed an amended motion for an evidentiary hearing on petition for writ of habeas corpus.

Mr. McKnight has presented several claims in his habeas corpus petition, supplemental petition, his amended supplemental petition, and his amended motion for an evidentiary hearing. The petitioner alleges that: (1) he was held on excessive bail; (2) the prosecutor presented hearsay testimony at the preliminary hearing; (3) the prosecutor provided false evidence to the grand jury resulting in a bench warrant for the

petitioner; (4) the prosecution suppressed exculpatory evidence; (5) Mr. McKnight received ineffective assistance of counsel at the pre-trial and trial stages; (6) the court scheduled and held a hearing on the motion to suppress while discovery was still outstanding; (6) the court improperly excluded various time periods from the calculation of how long petitioner had been held, resulting in the denial of petitioner's Rule 600 motion; (7) Rule 600 of the Pennsylvania Rules of Criminal Procedure violates equal protection because it only allows those on bail to petition for dismissal after 365 days; (8) the prosecutor presented false testimony and evidence during the hearing on the petitioner's motion to suppress; (9) the petitioner was denied his fair trial rights for numerous reasons, and (10) the government presented false testimony at the petitioner's bail hearing.

II. Analysis

None of Mr. McKnight's claims has been exhausted in the Pennsylvania state courts. In addition, some of his claims which relate to pre-trial detention have been mooted by his subsequent conviction. Other claims he has raised are not claims that can be heard by this court pursuant to a petition for a writ of habeas corpus. For these reasons, the petitioner's petition for

a writ of habeas corpus is denied.

A. Exhaustion

A habeas petitioner must exhaust all available state remedies before a federal court may entertain a habeas petition. 28 U.S.C. § 2254(b). Mr. McKnight has filed for post-verdict relief but has not yet presented any **of** his claims **to** the Pennsylvania Superior Court or the Pennsylvania Supreme Court. Pennsylvania provides Mr. McKnight with an opportunity to present and exhaust his claims in state court, either on direct appeal or through collateral attack pursuant to the Pennsylvania Post Conviction Relief Act. Because Mr. McKnight has not presented his claims in any of these venues, his claims are unexhausted and should be dismissed.

Mr. McKnight has argued that he should be excused from the exhaustion requirement because exhaustion would be futile in his case. On rare occasions, a federal court may excuse the exhaustion requirement if exhaustion would be **futile**. Landano v. Rafferty, 897 F.2d **661** (3d Cir.), cert. denied, 498 U.S. **811** (1990). To show futility, there must be no question that no avenue of relief is available in state court to the petitioner. Toulson v. Beyer, 987 F.2d **984, 986** (3d Cir. 1993). Mr. McKnight has not shown that this is the case here.

Mr. McKnight has argued that his petition raises allegations of wholesale misconduct and unfair treatment by the prosecutor and the court. Thus it would be futile for him to proceed in state court where they have already treated him unfairly. Such an argument is insufficient to show futility.

Mr. McKnight has also argued that the state courts have already decided the issue raised in his claim that Rule 600 violates the Equal Protection Clause. The Pennsylvania courts, however, have not decided this issue or addressed the constitutionality of Rule 600. The case cited by Mr. McKnight does apply the rule; however, it does not in any way address the constitutionality of the rule as it is applied to pre-trial detainees. See Pennsylvania v. Abdullah, 539 Pa. 351 (1995). Thus, Mr. McKnight has not shown that it is certain that the state court would not grant him relief as to this specific claim.

B. Mooted Claims

Mr. McKnight's challenges to the amount of bail and the propriety of the testimony at the bail hearing been mooted by his subsequent conviction. E.g., Murphy v. Hunt, 455 U.S. 478 (1982) (pretrial challenge to pre-trial detention and bail mooted by subsequent conviction). McKnight has argued that his case fits two exceptions to the mootness rule- collateral consequences and

a wrong capable of repetition and evading review.

If there are collateral consequences **of** the pre-trial detention, such as being barred from future occupations, being excluded from voting, or being excluded from being on a jury, a challenge to a pre-trial detention may not **be** moot. Carafas v. LaVallee, 391 U.S. 234, 248 (1968). Any collateral consequences Mr. McKnight has suffered --the loss of his license to practice law and potentially higher punishments for subsequent drug crimes-- result from his conviction, not his pretrial detention. There are no collateral consequences stemming from his pretrial detention that would prevent them from being considered **moot**.

If the harm claimed in a habeas petition has abated and is moot, but is capable of repetition and of evading review, mootness may not apply. Weinstein v. Bradford, 423 U.S. 147 (1975). Mr. McKnight alleges that the defects he alleges in the pre-trial process could be repeated, and that any challenge **to** a pre-trial detention **would** likely not be heard before pre-trial detention ended. Thus, he argues, his claims meet the capable of repetition yet evading review standard. However, Mr. McKnight has not shown that there is a reasonable expectation that he will be subjected to the same action again. Such a showing is required before this mootness exception will apply. Id. See also City of Los Angeles v. Lyons, 461 U.S. 95 (1983).

C. Non-cognizable Claims

Mr. McKnight has also raised claims that, even if they were exhausted, would not be cognizable on review by this Court. These include his claim under the Pennsylvania Speedy Trial Act and his challenges to the suppression hearing. Even had Mr. McKnight exhausted these claims in state court, these claims would be dismissed by this Court.

1. Speedy Trial Act Claims

Mr. McKnight has alleged that he was not tried as quickly as was required by the Pennsylvania Speedy Trial Act—formerly Pennsylvania Rule of Criminal Procedure 1100, now Pennsylvania Rule of Criminal Procedure 600. A claim that this rule was violated does not rise to the level of a constitutional claim. Wells v. Petsock, 941 F.2d 253 (3d Cir. 1991). Thus, it is not a proper basis upon which a federal court may **issue** habeas relief. Id.

2. Suppression Claims

Mr. McKnight has also raised challenges to the timing of, evidence in, and result of his suppression hearing. Such claims are not cognizable on federal habeas corpus review because they are essentially Fourth Amendment exclusion claims. A

federal habeas court will not consider a state prisoner's claim requesting relief based on a court's failure to exclude evidence when the petitioner has a full and fair opportunity to litigate the merits of his claim in state court. ~~Stone v. Powell~~, 428 U.S. 465 (1976).

Mr. McKnight had a full and fair opportunity to present his claims. According to Mr. McKnight, the state court held a three-day suppression hearing in August 2001. Pet. Memorandum of Law, April 14, 2002, ¶ 36-37. Mr. McKnight also stated that, on April 17, 2002, he was permitted to present additional evidence during further court proceedings on the suppression issue. Amended Motion for an Evidentiary Hearing on Petition for a Writ of Habeas Corpus, ¶ 6-7.

Mr. McKnight was given two opportunities to present evidence regarding his motion to suppress. Even if, as Mr. McKnight alleges, these hearings were not "full" or "fair," Mr. McKnight had the opportunity to request review of the court's failure to suppress the evidence through direct appeal or collateral review.

Stone only requires that the state provide an opportunity for full and fair presentation of claims, irrespective of whether the petitioner avails himself of that opportunity. Boyd v. Mintz, 631 F.2d 247, 250 (3d Cir.

1980) (citing ~~Gates v. Henderson~~, 568 F.2d 830 (2d Cir. 1977) (en banc), cert. denied, 434 U.S. 1038, 98 S. Ct. 775, 54 L. Ed. 2d 787 (1978)). Mr. McKnight had the opportunity to present his claim for exclusion in state court during and after the trial. Thus, this Court cannot consider those claims in a federal habeas action.

Each of the claims raised in Mr. McKnight's petition have not been exhausted either through direct appeal or through collateral appeal in the state courts. This is sufficient for dismissal ~~of~~ his petition at this time. Additionally, several of Mr. McKnight's claims would not be cognizable on habeas review by this Court even were they exhausted, either because they have been mooted by his conviction or because they raise Fourth Amendment issues. For these reasons Mr. McKnight's petition is dismissed without prejudice.

An appropriate order follows.

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

ANTHONY McKNIGHT,
Petitioner

CIVIL ACTION

v.

:
:
:

WALTER P. DUNLEAVY, et al.,
Respondents

No. 01-6144

ORDER

AND NOW, this 23rd day of October, 2002, upon consideration of the petitioner's petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241, the petitioner's supplemental petition and amended supplemental petition, the petitioner's amended motion for an evidentiary hearing (Docket # 21), the petitioner's memoranda in support thereof, the government's responses thereto, United States Magistrate Judge Melinson's Report and Recommendation, the petitioner's objections thereto, and all subsequent filings, for the reasons stated in a memorandum of today's date, it is HEREBY ORDERED that:

1. The petitioner's petition for writ of habeas corpus is DISMISSED without prejudice; and
2. The petitioner's motion for an evidentiary hearing is DENIED; and
3. There is no probable cause to issue a certificate

of appealability; and

4. The Clerk of the Court shall mark this case **closed** for statistical purposes.

BY THE COURT:

A handwritten signature in cursive script, reading "Mary A. McLaughlin", is written over a solid horizontal line.

MARY A. MCLAUGHLIN, J.