

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

MICHAEL R. THOMPSON,	:	
Petitioner	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 06-0063
JEFFERY A. BEARD, Ph.D., Secretary	:	
Pennsylvania Department of Corrections,	:	
PENNSYLVANIA STATE ATTORNEY	:	
GENERAL, and THE DISTRICT	:	
ATTORNEY OF THE COUNTY OF	:	
PHILADELPHIA,	:	
Respondents.	:	

ORDER AND MEMORANDUM

ORDER

AND NOW this 18th day of September, 2006, upon consideration of Petitioner's Motion for Reconsideration (Document No. 17, filed September 12, 2006), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that the Motion for Reconsideration is **DENIED**.

MEMORANDUM

I. INTRODUCTION

On February 8, 2002, following a jury trial in the Court of Common Pleas of Philadelphia County, petitioner was convicted of endangering the welfare of a minor, corruption of a minor, and indecent assault. On June 4, 2002, petitioner was sentenced to a term of two-to-five years imprisonment for endangering the welfare of a minor, a consecutive term of five years probation for indecent assault and corruption of a minor, and was required to register in accordance with Megan's Law.

Petitioner appealed his sentence, which was affirmed by the Superior Court of

Pennsylvania on October 17, 2003. Petitioner did not file a petition for allowance of appeal to the Supreme Court of Pennsylvania.

On February 26, 2004, petitioner filed a petition for post-conviction relief under the Pennsylvania Post-Conviction Relief Act (“PCRA”), 42 Pa. C.S. 9543. On May 25, 2005, the PCRA court denied relief. Petitioner filed a timely notice of appeal of the PCRA court’s decision to the Superior Court.

On August 23, 2005, the Superior Court remanded petitioner’s PCRA appeal to the trial court for a hearing on petitioner’s request to proceed pro se. On October 4, 2005, after a hearing on the matter, the PCRA court granted petitioner’s request. The PCRA court, however, did not notify the Superior Court of its determination.

On January 6, 2006, while his PCRA appeal was pending, petitioner filed a federal habeas corpus action, asserting inter alia ineffective assistance of trial counsel; due process, equal protection, and double jeopardy violations; and violations of the right against self-incrimination. The Report and Recommendation of United States Magistrate Judge Timothy R. Rice, dated May 17, 2006, recommended that the habeas corpus petition be dismissed without prejudice for failure to exhaust state remedies. In an Order & Memorandum dated August 18, 2006, the Court approved and adopted the Report and Recommendation, and dismissed the Petition for Writ of Habeas Corpus without prejudice. Petitioner has now filed a Motion for Reconsideration of the Court’s August 18, 2006 Order & Memorandum. For the reasons below, petitioner’s Motion for Reconsideration is denied.

II. DISCUSSION

Three situations justify granting a motion for reconsideration: (1) an intervening change in the controlling law; (2) the availability of new evidence not available when the court dismissed the prior petition; or (3) the need to correct a clear error of law or fact or to prevent “manifest injustice.” Max’s Seafood Cafe v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); Dimensional Music Publ., LLC v. Kersey, 2006 U.S. Dist. LEXIS 47488, 2006 WL 1983189, *1 (July 12, 2006). “Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly.” Cont’l Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995); see also Porter v. NationsCredit Consumer Discount Co., 2006 U.S. Dist. LEXIS 41947, 2006 WL 1737544, *2 (E.D. Pa. June 22, 2006).

Petitioner’s Motion for Reconsideration is based on the need to correct errors of law and to prevent injustice. Petitioner also submits a document in support of his motion, thus implicitly arguing that there is “newly discovered evidence.” Def. Ex. A. The Court will first address the “newly discovered evidence.”

The document that petitioner seeks to present—an Order of the Superior Court, dated June 29, 2006—was either available or should have been available to the petitioner before this Court decided the Petition for Writ of Habeas Corpus. The Superior Court Order directs the PCRA court to notify the Superior Court of its determination of petitioner’s pro se status, and to forward the trial court record to the Superior Court. Def. Ex. A. The issuance of the Order demonstrates that the PCRA court did not promptly inform the Superior Court of its October 4, 2005 determination that petitioner could proceed pro se. That was not done until July 7, 2006. On that date the Superior Court received the trial court record, which, according to the Order of June 29, 2006, was

due on July 25, 2005. Petitioner notes this delay in the adjudication of his PCRA appeal, and argues that the exhaustion requirement of 28 U.S.C. § 2254 should be excused. See Lee v. Stickman, 357 F.3d 338, 341 (3d Cir. 2004); Wojtczak v. Fulcomer, 800 F.2d 353, 354 (3d Cir. 1986).

“[C]ourts will amend a prior judgment for newly discovered evidence only where the evidence submitted was not available when the court decided the motion.” Porter, 2006 WL 1737544, at *2 (quoting Max’s Seafood Café, 176 F.3d at 677). Because the evidence petitioner seeks to submit was available, or should have been available, to petitioner before the Court dismissed the Petition for Writ of Habeas Corpus, this evidence does not warrant reconsideration. Moreover, assuming arguendo that the Court decided to consider this evidence, it does not alter the principal basis for the Court’s August 18, 2006 Order & Memorandum: petitioner still has a pending PCRA appeal. Although inexcusable or inordinate delay in the processing of state claims may occasionally excuse the exhaustion requirement, this case does not present the exceptional circumstances necessary to warrant such excuse.¹

Petitioner’s arguments in support of his assertion that this Court, in its August 18, 2006 Order & Memorandum, made errors of law are little more than restatements of the arguments previously made in the Petition for Writ of Habeas Corpus. “A motion for reconsideration is not properly grounded on a request that a court consider repetitive arguments that have been fully examined by the court.” Blue Mountain Mushroom Co. v. Monterey Mushroom, Inc., 246 F.

¹ Petitioner’s PCRA appeal is proceeding. Six days after petitioner’s Motion for Reconsideration was filed, the Superior Court forwarded a copy of a briefing letter to petitioner. Petitioner’s brief is due in the Superior Court on October 16, 2006. See Williams v. Vaughn, 2002 U.S. Dist. LEXIS 20065, *14, 2002 WL 31375721, *4 (E.D. Pa. Oct. 18, 2002).

Supp.2d 394, 398 (E.D. Pa. 2002). Here, as in the Petition for Writ of Habeas Corpus, petitioner seeks to reassure the Court that he will not include any of the issues raised in the habeas corpus petition in his as yet unfiled PCRA appellate brief. Indeed, petitioner states that Pennsylvania procedural rules bar him from raising the issues raised in his habeas corpus petition in the pending PCRA appeal. For this reason petitioner asks the Court to excuse the exhaustion requirement.

The Court cannot do so. Exhaustion will not be excused unless state law “clearly foreclose[s]” state review of unexhausted claims. See Toulson v. Beyer, 987 F.2d 984, 987 (3d Cir. 1993). Petitioner’s prediction that his claims are waived under state law is not sufficient to establish foreclosure, which is a question for the Pennsylvania courts. “Although exhaustion is often cumbersome, and may appear to require duplicative expenditure of judicial resources on claims that frequently have no merit, the doctrine is premised on firmly entrenched principles of comity. We are not free to disregard those principles for the sake of expediency or occasional efficiency.” Lines v. Larkins, 208 F.3d 153, 163 (3d Cir. 2000).

Finally, petitioner asks the Court to reconsider the August 18, 2006 Order & Memorandum on the ground that this Court’s dismissal without prejudice was “nothing of the kind” because petitioner’s release date is approaching. Petitioner cites Spencer v. Kemna, 523 U.S. 1, 7 (1998) for the proposition that he will “be foreclosed from filing a new Habeas Corpus action” when he is released from incarceration. Mot. for Reconsideration, 5. On this point, petitioner misstates the law. For the purposes of 28 U.S.C. § 2254, a petitioner meets the “custody” requirement while incarcerated or on probation. See Lee v. Stickman, 357 F.3d at 342. Because petitioner has been sentenced to a five year term of probation, his release will not moot the issues raised in this habeas corpus petition.

III. CONCLUSION

Petitioner's Motion for Reconsideration restates arguments previously raised by the Petition for Writ of Habeas Corpus. These arguments are not a basis for reconsidering the Court's Order & Memorandum of August 18, 2006. Nor does petitioner present any evidence that was not available previously. Accordingly, petitioner's Motion for Reconsideration is denied.

BY THE COURT:

/s/ Honorable Jan E. DuBois

JAN E. DUBOIS, J.