

court will deny the petition without an evidentiary hearing and will deny the remaining motions.

I. BACKGROUND

A brief explanation of the relevant background is necessary to understand this case. Petitioner and Eileen Poole ("Poole"), the victim in the underlying criminal case, were business partners.² At some point they also became involved in a romantic relationship. In the Fall of 1992, the romantic relationship began to deteriorate. On November 6, 1992, beginning at approximately 11:00 p.m., and continuing until approximately 3:55 a.m., the next morning, Petitioner repeatedly assaulted Poole about the face and body, taking breaks to rinse the blood off her face in the shower, and then resuming the assault. Petitioner also barricaded the door so that Poole could not leave, and threatened her with a knife. Poole suffered severe injuries, including an "orbital floor blowout" fracture to her right eye. Sent. Hearing Tr. at 12-16. See also Bankr. No. 93-12285, 94-0891 Tr. at 14 (discussing other injuries including broken ribs, fractured skull, fractured nose and a punctured eardrum). Eventually, Petitioner passed out and Poole was able to make her way to the lobby of the apartment building. The lobby personnel called the police and an ambulance. Poole was taken to the

2. There is some dispute about the ownership of the company. However, that dispute is irrelevant for the purposes of this memorandum.

hospital where she remained for weeks. The police arrested Petitioner and took him into custody. After clinical testing, Petitioner was given sedatives and other medications.

On May 20, 1993, Petitioner pled guilty to aggravated assault and unlawful restraint in the Court of Common Pleas for Philadelphia County. (Information Nos. 1771 and 1774, Jan. Term 1993). Pursuant to a plea bargain, the Commonwealth entered a nolle prosequi on additional charges of recklessly endangering another person, false imprisonment, and possession of an instrument of crime. On July 8, 1993, the state court sentenced Petitioner to a term of five to seventeen years imprisonment on the aggravated assault count and a consecutive term of four years of probation on the unlawful restraint count. Poole did not appear at the sentencing hearing. Petitioner did not appeal his sentence or attempt to withdraw his guilty plea.

Poole visited Petitioner a number of times while he was in prison. Bankr. Tr. at 22. At some point, she stopped visiting Petitioner. During this time their business disintegrated. As a result, Poole could not afford the rent payment for the apartment. When vacating the apartment, she did not take all of the furnishings and belongings. Bankr. Tr. at 24. In 1993, Poole filed for bankruptcy. As part of the bankruptcy she liquidated the corporation's assets. Petitioner claims that some of the assets were his personal property. She also listed on the

proper bankruptcy forms that she held property belonging to Petitioner. Petitioner was included as a debtor in the bankruptcy and testified at the hearings. There is dispute over the ownership and location of personal property and there is also dispute over whether money is owed. These issues were properly addressed by the bankruptcy court.

Relating to his criminal conviction, on February 23, 1995, Petitioner filed a pro se petition for relief under Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Con. Stat. Ann. § 9541 et seq. Petitioner argued that his guilty plea was involuntarily and unlawfully induced and that trial counsel rendered ineffective assistance. The state court appointed counsel for Petitioner. Petitioner's PCRA counsel filed a "no merit" letter with the court.³ On December 1, 1995, the PCRA court dismissed the petition and permitted counsel to withdraw. Petitioner filed an appeal with the Pennsylvania Superior Court. On September 30, 1996, the Superior Court dismissed the appeal because Petitioner did not file a brief. Commonwealth v. Anderson, No. 4271 Phil.1995. Petitioner appealed to the Pennsylvania Supreme Court, which denied allocatur on April 10, 1997. Commonwealth v. Anderson, No. 968 E.D. Allocatur Docket 1996.

3. A "no merit" letter, pursuant to Pennsylvania v. Finley, 481 U.S. 551 (1987), certifies that counsel has reviewed the record and concluded that no issue of arguable merit exists.

On September 11, 1997, Petitioner filed this federal petition for habeas corpus. He alleges five grounds for relief: (1) the Superior court committed constitutional error by dismissing his appeal, (2) trial counsel was ineffective for failing to investigate petitioner's defense and for coercing him to enter a guilty plea, (3) he was denied procedural due process because he was denied arraignment under Pa. R. Crim. P. 303 and was committed to a psychiatric ward where statements were elicited from him without the benefit of counsel or Miranda warnings, (4) Petitioner's guilty plea was involuntary and unlawfully induced, and (5) Petitioner's guilty plea and sentence are illegal and void because the trial court judge was biased. (Pet. at 1-11.)

II. JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 2254⁴

4. The statute provides, in pertinent part:

[A] district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254(a).

and reviews the magistrate judge's report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(C).⁵

III. DISCUSSION

A. Procedural Default

Petitions under 28 U.S.C. § 2254 are not a substitute for direct appeal. Generally, if a prisoner has defaulted his claims in state court--that is he failed to present them to the proper tribunals in the proper manner--pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred. Coleman v. Thompson, 501 U.S. 722, 750 (1991). Federal courts can only review defaulted claims in a limited number of circumstances: (1) if it is shown that the rule was not independent and adequate; (2) if the petitioner demonstrates cause for the default and actual prejudice resulting therefrom; or (3) if the petitioner can demonstrate that failure to consider the claim will result in a fundamental miscarriage of justice.

5. The statute provides, in pertinent part:

[The court] shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. . . . [and] may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.

28 U.S.C. § 636(b)(1)(C).

Coleman v. Thompson, 501 U.S. 722, 750 (1991); see also Doctor v. Walters, 96 F.3d 675, 683 (3d Cir. 1996).

Because Petitioner did not raise his claims on direct appeal, he has procedurally defaulted on his claims and the court may not consider the claims on their merits unless he can satisfy one of the exceptions. He argues that he can meet both the cause and prejudice exception and the fundamental miscarriage of justice exception.

1. The Cause and Prejudice Standard

"[T]he existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's effort to comply with the [federal] procedural rule." Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such objective factors include "that the factual or legal basis of a claim was not reasonably available to counsel" or that "some interference by officials" made compliance impracticable. Id. If Petitioner can show cause he must then also show that the errors worked to his actual and substantial disadvantage. United States v. Frady, 456 U.S. 152, 170 (1982); see also Coleman v. Thompson, 501 U.S. 722, 735 n.1 (1991) (stating that if a petitioner fails to exhaust state remedies and the court to which petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred, there

is default regardless of the decision of the last state court to hear the claims.)

Petitioner argues that he has satisfied the cause and prejudice standard because he was not provided with all of his court records to perfect his appeal brief. (Obj. at 1-2.) He asserts that state officials were the cause of this and thus he has satisfied the requirement set forth in Murray. In support he cites a February 23, 1996 Superior Court order requiring prior counsel and the Court of Common Pleas to provide him with the necessary documents to file his appeal. (Obj. at 4.) However, Petitioner does not explain what records were withheld and how they were necessary. There is no evidence that Petitioner did not receive the necessary records. Further, necessary records does not mean all records. Petitioner's reasoning seems to be that because he did not get everything he requested, he was denied due process. Petitioner has attached as an exhibit the list of documents he requested. Some are clearly not relevant to his appeal and some do not appear to be part of the state court record. Some of the documents that are not part of the record may be confidential documents to which he is not entitled. The order that he relies upon does not order the Commonwealth to provide Petitioner with everything he wants, only the documents necessary. The record shows that Petitioner had a copy of his

sentencing and plea transcripts, and it appears from the record that Petitioner was provided with all other relevant documents.

One of the documents Petitioner believes he was entitled to was the victim's medical records to show that she did not receive the injuries of which she testified. (Supp. Obj. to R & R at 2.) That record is not relevant to an appeal on the grounds that his plea was involuntary and his counsel was ineffective. Because it is not relevant, failure to provide it upon request could not constitute cause for failure to comply with state court procedure. Petitioner has failed to describe any relevant documents that were withheld. The court finds that he has not shown cause or prejudice to excuse the default.

2. Miscarriage of Justice

Petitioner also argues that his procedural default should be excused because the failure to address his claims will result in a miscarriage of justice. (Rebuttal at 4.) The fundamental miscarriage of justice exception is only granted in extraordinary situations, such as where it is shown that the constitutional violations probably resulted in the conviction of one who is actually innocent. Carrier, 477 U.S. at 496. If a petitioner presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial, the petitioner will be allowed to argue the merits of his claim. Actual innocence is the same as factual innocence. That is, Petitioner must show

that he did not commit the crime, rather than that some error in procedure occurred. See Hull v. Freeman, 991 F.2d 86, 91 n.3 (3d Cir. 1993). This exception does not apply to those whose guilt is conceded or plain. Schlup v. Delo, 513 U.S. 298, 321 (1986). Petitioner conceded his guilt when he pled guilty.⁶ However, he argues that he is actually innocent and that because his guilty plea was involuntary, his guilt is not conceded.

The court will look at the facts to determine whether a fundamental miscarriage of justice will occur. Petitioner argues that his plea was not voluntary because he did not understand what he was doing. The court has read the guilty plea colloquy before the Honorable Pamela Pryor Cohen. The record shows that she went to great length to be sure Petitioner understood each question, and the charges to which he was pleading guilty. Each of his answers was appropriate, lucid and clear. He and his counsel were given the opportunity to object or question any part of the procedure. He was explained his right to withdraw his plea and he was explained his appeal rights.⁷ The record shows a knowing and voluntary plea of guilty to both counts. See May 20, 1993 Guilty Plea Tr. at 4-6. (questions and lucid answers

6. Petitioner may also fall into the second category, that is, his guilt is plain.

7. Petitioner argues that he was not in the courtroom to have these explained to him. The transcript show that Petitioner was in the courtroom at the time and that he understood his rights. See Guilty Plea Tr. at 10, 17-18.

regarding Petitioner's background): Id. at 6-10 (detailed explanation of Petitioner's right to a jury trial); Id. at 10-15 (underlying facts to which Petitioner pled guilty); Id. at 15-16 (Petitioner's arraignment and actual entry of guilty plea.)

Petitioner argues that his counsel promised him he would not receive prison time, and that his guilty plea was involuntary because he relied upon this promise. (Supp. Obj. at 3.)

The record shows that his counsel actually said something to the effect that he "would do everything he could." See PCRA Pet. at 9. Regardless, at Petitioner's hearing, the judge explained to him the maximum term that he could receive and he indicated that he understood. Guilty Plea Tr. at 10. When he was asked whether any threats or promises were made or whether he was coerced into pleading guilty and he responded "no." Guilty Plea Tr. at 5.

The record shows that Petitioner's guilty plea was knowing and voluntarily. There has been no showing of actual innocence. While Petitioner has provided the court with a barrage of papers and motions proclaiming his innocence, they do not show that he is innocent. Rather, if believed, those papers merely show that the criminal charges arise out of a complicated domestic dispute. The subsequent bankruptcy and disposition of property, whether lawful or not, has no relevance in Petitioner's criminal case for aggravated assault and unlawful restraint. A miscarriage of

justice will not result from the court's dismissal of the Petition.

Petitioner did not present any of his claims to the state appellate courts. Petitioner failed to file a brief on appeal of his post-conviction petition, and the claim was dismissed. It appears that Petitioner no longer has a remedy by which the state courts could consider his claims because he is now barred from filing a second PCRA petition.⁸ Petitioner cannot claim ineffective assistance at the PCRA level because there is no constitutional right to counsel at that stage. See Coleman, 501 U.S. at 752. Petitioner procedurally defaulted on his claims and cannot satisfy any of the exceptions that would permit this court to hear his claims. Therefore, the court will dismiss the Petition.

B. The Remaining Motions

Because the court will dismiss the Petition on procedural grounds, the court will deny the remaining motions as moot. Those motions are only relevant to the merits of the claims that the court will not address.

IV. CONCLUSION

8. The PCRA, as amended January 16, 1996, provides that collateral actions must be filed within one year from the date that the conviction becomes final. 42 Pa. Con. Stat. Ann. § 9545 (b)(1).

For the above reasons, the court will deny the petition for writ of habeas corpus without an evidentiary hearing.

An appropriate Order follows.

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

JAMES HENDEL, a/k/a	:	CIVIL ACTION
James Anderson	:	
	:	
v.	:	
	:	
DONALD VAUGHN, <u>et al.</u>	:	NO. 97-5690

ORDER

AND NOW, TO WIT, this 10th day of August, 1998, upon consideration of Petitioner James Hendel's petition for a writ of habeas corpus, the magistrate's report and recommendation, the objections thereto, the Commonwealth of Pennsylvania's responses, and the record, IT IS ORDERED that said petition is DENIED without an evidentiary hearing.

IT FURTHER ORDERED that Petitioners motions to expand the record and for an evidentiary hearing are DENIED AS MOOT.

LOUIS C. BECHTLE, J.