

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

JACK WILLIAMS : CIVIL ACTION
 :
 v. :
 :
 :
 DAVID LARKINS ET AL. : No. 97-7809

ORDER-MEMORANDUM

AND NOW, this 26th day of August, 1998, upon independent and careful review of the Report and Recommendation of Magistrate Judge Jacob B. Hart, and upon respondents' objections,¹ the Report is adopted, with certain modifications outlined below.

As reported and recommended by Magistrate Judge Hart, there may not have been complete exhaustion of state remedies because the petition under 28 U.S.C. § 2254 raised three claims for the first time.² However, inasmuch as there appears to have been "exhaustion" in that any state collateral review of these claims has been procedurally defaulted, the claims are unreviewable.³

¹ Respondents object to Magistrate Judge Hart's proposed disposition of the petition, not to his conclusions regarding the merits.

² These claims are: that petitioner's rights were violated when he was forced to stand trial in prison attire; counsel was ineffective in permitting petitioner to be so tried; and counsel was ineffective in failing to request a jury instruction as to his good character.

³ "Before exhaustion will be excused, state law must clearly foreclose state court review of the unexhausted claims." Toulson v. Beyer, 987 F.2d 984, 987 (3d Cir. 1993). Here, such foreclosure appears clear: in the absence of an applicable exception to the statute of limitations, a procedural default absolutely bars consideration of a second P.C.R.A. petition.

(continued...)

Federal habeas review of claims that have been procedurally defaulted in state court is narrowly circumscribed:

In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to a state...procedural rule, federal habeas review of the claims is barred unless petitioner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that the failure to consider the claims will result in a fundamental miscarriage of justice.

Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 2565, 115 L. Ed.2d 640 (1991).

The "cause and prejudice" standard "will be met in those cases where review of a state prisoner's claim is necessary to correct a 'fundamental miscarriage of justice.'" Coleman v. Thompson, 501 U.S. at 748, 111 S. Ct. at 2564 (quoting Engle v. Issac, 456 U.S. 107, 129, 102 S. Ct. 1558, 1576, 71 L. Ed.2d 783 (1982)). Here, the factual basis of these three claims was known to petitioner at the time he filed his first P.C.R.A. petition. Therefore, petitioner could not show cause for their default. Furthermore, it does not appear that petitioner could show a "miscarriage of justice" if his claims are not heard. See Coleman

³(...continued)

Commonwealth v. Alcorn, 703 A.2d 1054, 1056-57 (Pa. Super. 1997); Commonwealth v. Conway, 796 A.2d 1243, 1244 (Pa. Super. 1997). Petitioner's sentence became final on December 28, 1992, and none of the exceptions to the P.C.R.A.'s one year statute of limitations could apply. See 42 Pa.C.S. § 9545(b)(1)(I)-(iii) (exceptions include: failure to raise because of government interference; failure to raise because of previously undiscoverable facts; or a newly recognized federal or state constitutional right). In this situation, petitioner's claims can be deemed exhausted. Castille v. Peoples, 489 U.S. 346, 351, 109 S. Ct. 1056, 1060, 103 L. Ed.2d 380 (1989).

v. Thompson, 501 U.S. at 748, 111 S. Ct. at 2564 (“Where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default”) (quoting Murray v. Carrier, 477 U.S. 478, 496, 106 S. Ct. 2639, 2649-50, 91 L. Ed.2d 397 (1986)).

Edmund V. Ludwig, J.