

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

AMER GRIFFIN : CIVIL ACTION  
 :  
 v. :  
 :  
 THE PENNSYLVANIA BOARD OF :  
 PROBATION AND PAROLE : NO. 99-417

MEMORANDUM AND ORDER

Fullam, Sr. J. May , 1999

Petitioner, a state prisoner, seeks habeas corpus relief under 28 U.S.C. § 2254. The petition sets forth three claims: (1) violation of due process because the Parole Board failed to hold a timely revocation hearing in connection with a 1993 recommitment as a parole violator; (2) his maximum sentence date on the parole violation has been improperly calculated; and (3) the Parole Board has no constitutional right to require petitioner to participate in sex offender treatment, as a condition of granting parole.

The United States Magistrate Judge to whom the case was referred has filed a report and recommendation suggesting that petitioner has failed to exhaust his state remedies on the first two claims (because, although he failed to register a timely appeal from the challenged parole decisions, and thus arguably has procedurally defaulted those claims, the state courts might still consider an application under the Post Conviction Relief

Act). As to the third claim, the magistrate suggests that there are no state remedies for petitioner to exhaust, but that the claim should not be considered because this is a "mixed" petition, containing both exhausted and unexhausted claims. See Rose v. Lundy, 455 U.S. 509 (1982). The magistrate's report further opines, however, that the third claim could be denied on the merits.

While I am in general agreement with the views of the Magistrate Judge, I am somewhat less confident than he as to whether there are indeed any remaining state remedies for the petitioner on the first two claims. I need not reach a firm conclusion on the exhaustion issue, however, because I conclude that there is no merit to any of the three claims. As recently amended, 28 U.S.C. § 2254(b)(2) now specifically authorizes a federal court to deny habeas relief on the merits, without requiring exhaustion of state remedies. I am satisfied that (1) the parole revocation hearing was not untimely, (2) petitioner's sentence was properly calculated, and (3) requiring sex-offender treatment as a condition of future parole is not unconstitutional. The petition will be denied in all respects.

An Order follows.

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

AMER GRIFFIN	:	CIVIL ACTION
	:	
v.	:	
	:	
THE PENNSYLVANIA BOARD OF	:	
PROBATION AND PAROLE	:	NO. 99-417

ORDER

AND NOW, this            day of May, 1999, IT IS ORDERED:

That the petition of Amer Griffin for a writ of habeas corpus is DENIED.

There is no basis for a certificate of appeal.

---

John P. Fullam, Sr. J.