

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

LLOYD T. REID : CIVIL ACTION
v. :
JAMES A. PRICE, et al. : NO. 98-3968

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

October 4, 1999

Petitioner Lloyd T. Reid ("Reid") has filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254. By Order of September 30, 1998, the court referred his petition to United States Magistrate Judge Arnold C. Rapoport ("Judge Rapoport") for a Report and Recommendation. Judge Rapoport recommended denial and dismissal of the petition; Reid filed objections to that recommendation and a motion for leave to amend his petition. For the following reasons, the motion for leave to file an amended petition will be granted, and the petition will be remanded to the United States Magistrate Judge.

PROCEDURAL HISTORY

Reid was found guilty of first degree murder, robbery, and possessing an instrument of crime on November 14, 1991 following a jury trial before the Honorable Carol Engel Temin in the Court

of Common Pleas of Philadelphia.¹ After a penalty hearing the jury returned a sentence of death, but a sentence of life imprisonment was imposed by Judge Temin following post-verdict motions.

Reid seeks habeas relief on the following grounds:

1) Trial counsel was ineffective for failing to seek a cautionary instruction when a witness testified to an unrelated robbery allegedly committed by the defendant;

2) Trial counsel was ineffective for failing to object to testimony concerning threats made to a Commonwealth witness;

3) Trial counsel was so ineffective that a miscarriage of justice has occurred, and he deserves a new trial;

4) Trial court erred when it permitted Commonwealth ballistics expert to testify concerning the comparison of bullets recovered from the decedent's body with the weapon recovered, even though those conclusions were not contained in his report.

All four of these grounds were raised by Reid on appeal to the Pennsylvania Superior Court, which affirmed the judgment on March 7, 1996. Reid sought discretionary review by the Pennsylvania Supreme Court on the same grounds, but was denied on July 21, 1997. Reid did not seek collateral review under the Post Conviction Relief Act, 42 Pa. Cons. Stat. Ann. § 9541 et

¹The facts set forth in this procedural history are adapted from Judge Rapoport's Report and Recommendation.

seq. (West 1998) ("PCRA"). On July 25, 1999, subsequent to the Report and Recommendation of Judge Rapoport, Reid filed a motion for leave to file an amended petition.

DISCUSSION

In his motion for leave to amend, Reid claims that his original petition "lacked the legal expertise to advance [his] averments properly," and that "due to his lack of legal knowledge he now faces the risk of forever losing the opportunity to litigate his issues and reaching a decision on the merits." Reid asks for leave to file an amended petition so that he can "cure the deficiencies in his original petition" that Judge Rapoport cited in his Report and Recommendation.

The Federal Rules of Civil Procedure apply to motions to amend petitions for a writ of habeas corpus. See 28 U.S.C.A. § 2242 (West 1994). The Rules provide in part that:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . Otherwise a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

Fed. R. Civ. P. 15(a). A refusal of a motion for leave to amend may be justified by: 1) undue delay; 2) bad faith or dilatory motive; 3) undue prejudice to the opposition; 4) repeated failures to correct deficiencies with previous amendments; and 5) futility of the amendment.

This is Reid's first habeas corpus petition. The Anti-terrorism and Effective Death Penalty Act of 1996 ("AEDPA") requires prisoners wishing to file "second or successive" petitions to file a motion in the Court of Appeals requesting an order authorizing the District Court to consider the new petition. 28 U.S.C. § 2244(b)(3). The Court of Appeals may only grant such a motion if the petitioner makes a prima facie showing that new requirements for a second or successive petition² are met. Id. Given the rigors of the new AEDPA provisions, fairness considerations suggest that district courts should be somewhat lenient in allowing leave to amend initial petitions since the petitioner is likely to get only one opportunity for habeas relief. Reid's status as a pro se petitioner also warrants a more liberal standard for granting leave to amend. Cf. Weaver v. Wilcox, 650 F.2d 22, 27 (3d Cir. 1981).

²In a "second or successive" petition, the petitioner is only entitled to habeas relief if:

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244 (b)(2) (West Supp. 1999).

As respondent acknowledges, Reid's "boilerplate" petition contains only broad statements of each claim. No memorandum of law was filed. The Report and Recommendation of Judge Rapoport emphasizes that the district court can only review claims that are "stated with sufficient specificity and supported by pertinent law." (Report and Recommendation at 6). Judge Rapoport's recommendation that Reid's petition be denied is primarily based on the absence of detailed facts or legal argument in the petition, the problem that Reid seeks to correct by amendment.

With respect to his three ineffective assistance of counsel claims, Reid did not attempt to satisfy the two-part test of Strickland v. Washington, 466 U.S. 668 (1984), with any facts or legal argument, even though he had the burden of rebutting the conclusions of the state court presumed correct. Reid argues in his objections to the Report and Recommendation that if given the opportunity to amend, he would attempt to do so. Reid also failed to provide any federal grounds for his claim that the Commonwealth's ballistics expert should not have been permitted to testify about information not contained in his report. Judge Rapoport did assess the possibility of a federal discovery violation under Brady v. Maryland, 373 U.S. 83 (1963), and concluded that Reid's claim would fail under that standard. In his objection to the report, Reid asks for leave to amend to

frame an appropriate argument under federal law.

Judge Rapoport based his rejection of Reid's claims primarily on the absence of any supporting facts or law in his petition. Because Reid seeks to correct this problem by amending his petition, and because there is a strong presumption in the Federal Rules of Civil Procedure favoring decisions on the merits, Riley v. Taylor, 62 F.3d 86, 90 (3d Cir. 1995), Reid's motion for leave to amend his habeas petition will be granted. The Magistrate Judge should set a reasonable time limit on remand.

An appropriate Order follows.

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ORDER

AND NOW, this 4th day of October, 1999, upon consideration of the petition for writ of habeas corpus, respondents' reply thereto, the report and recommendation of Magistrate Judge Arnold C. Rapoport, petitioner's objections, respondent's response thereto, petitioner's motion for leave to file an amended petition and respondent's reply thereto, it is hereby ordered that:

1. The Report and Recommendation is **NOT APPROVED**.
2. The petitioner's motion for leave to file an amended petition is **GRANTED**. Petitioner shall be file this amended petition on or before a date set by the United States Magistrate

Judge on remand.

3. The matter will be **REMANDED** to the United States Magistrate Judge for consideration of the amended petition.

S.J.