

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

CERRONE FURMAN a/k/a HARU-BEY : CIVIL ACTION  
[#917700] :  
 :  
 :  
 v. :  
 :  
 :  
 REGINALD HAMMOND, et al. : NO. 03-6640

**ORDER**

AND NOW, this 8<sup>th</sup> day of November, 2004, for the reasons set forth in the attached memorandum, it is hereby **ORDERED** that:

By November 22, 2004, the Respondents shall file a supplemental response to Petitioner's habeas petition, updating this Court on the current status of Petitioner's capital murder case, and providing additional argument and/or documentation to explain why Petitioner who was arrested on January 13, 2001, has not yet been tried. The Respondents are also directed to state their position, in light of the exhibits attached to Petitioner's reply, as to whether he has raised speedy trial concerns in the state system.

BY THE COURT:

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M. FAITH ANGELL  
CHIEF UNITED STATES MAGISTRATE JUDGE

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**MEMORANDUM**

M. FAITH ANGELL  
Chief United States Magistrate Judge

November 8, 2004

Presently before this Court is a *pro se* §2254/2241 habeas petition, remanded to me by Order of the Honorable Clarence C. Newcomer, dated April 6, 2004, for further consideration of Petitioner’s “contentions that he has been denied his right to a speedy trial.” Petitioner is currently incarcerated at Curran-Fromhold Correctional Facility [“CFCF”] in Philadelphia. Mr. Furman represents that he is in pretrial status on charges of “robbery/murder, ect., etc. [sic]” “*Petition For Writ of ‘Habeas Corpus’ (2255), (2254). Motion to Vacate And Dismiss Due To Violations Of the U.S. Constitution Amend. 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> U.S.C.A*” [Docket Entry No. 1].<sup>1</sup>

**BACKGROUND**<sup>2</sup>

On October 22, 2003, Petitioner filed a self-styled habeas petition. In this pleading, Mr. Furman argues:

“On January 13, 2001, I, Haru-Bey, ex rel. Cerrone Furman, was arrested and charged with robbery/murder, ect., ect [sic] My trial date was set for December 8,

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<sup>1</sup> Hereinafter “habeas petition.”

<sup>2</sup> In preparing this Memorandum and Order, I have reviewed the following documents: Mr. Furman’s §2254/2241 habeas petition, his “Amendment Or Written Objections To Magistrate Judge’s Report and Recommendation,” the Commonwealth’s response, and Petitioner’s “Response In Opposition To Respondents Response.”

2003, approximately 1,060 days after my arrest which is a blatantly clear violation of 'Due Process' of the law."

*Habeas Petition* at p. 2.

Petitioner requests that following relief:

"I have been denied a speedy trial, and where deprivation of constitutional right to speedy trial has been infringed upon, dismissal of charges 'with prejudice' is the only possible remedy. [. . .] The Commonwealth's failure to give me a prompt trial shows a 'lack of due diligence' on their part and violates Due Process!"

See February 5, 2004 letter addressed to me from Petitioner.<sup>3</sup>

After reviewing Petitioner's pleadings, I recommended that this habeas matter be summarily dismissed for failure to exhaust. I found nothing in the pleadings which rose to the level of extraordinary circumstances required to grant pre-trial habeas relief. *March 17, 2004 Report and Recommendation* [Docket Entry No. 6].

Petitioner filed an amendment to his habeas petition/objections to my March 17, 2004 Report and Recommendation. In this pleading, Mr. Furman argues that "unprejudiced review" of his habeas petition shows that he has made allegations of harassment, bad faith and other intentional activity by the Commonwealth. Specifically, Petitioner asserts, *inter alia*, that:

- (1) the Commonwealth has failed to follow set procedures in his prosecution, which is "equal to a showing of bad faith;"
- (2) he has been denied the right to be present in the courtroom at any hearing where his trial has been postponed, placing Petitioner in a position of "non-judicial limbo;"
- (3) the Commonwealth has infringed upon his right to a speedy trial "without a reasonable basis or a chance of success;"
- (4) Petitioner has been subjected to "extended pretrial persecution" and "oppressive detainment of a individual presumed to be innocent," instead of "prompt prosecution" in violation of his constitutionally guaranteed rights;
- (5) Petitioner feels "as though, when the Commonwealth refuses to recognise [sic] my constitutional right to self representation, it is a blatantly clear proof that it has

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<sup>3</sup> Mr. Furman sent the February 5, 2004 letter in response to my January 30, 2004 Order directing him to refile his habeas petition on a current §2254 habeas form.

corrupt, ill moral, and dishonest purpose;”

(6) the Commonwealth has engaged in “intentional harassment” by not allowing Petitioner in the courtroom when he is brought to the Criminal Justice Center, not informing him of what is going on, and not sending Petitioner “a subpoena explaining the reason why my trial keeps getting postponed;”

(7) the Commonwealth has intentionally delayed Petitioner’s trial to find “more evidence (suspects that were in another country);”

(8) the Commonwealth’s delay “designed solely to gain a tactical advantage over accused (presumed to be innocent),” “violates due process and has prejudiced [Petitioner’s] defense by lapse of time;”

(9) the Commonwealth is intentionally delaying Petitioner’s trial “to harass [him], and coerce [him] into pleading guilty;”<sup>4</sup> and

(10) Numerous individuals, “more than 30% if not greater of inmates” in Petitioner’s cell block alone are “being deprived of speedy trial rights, etc, etc:”

*“Amendment To Petition - Or Written Objections To Magistrate Judge’s Report and Recommendation”* [Docket Entry No. 8] at pp. 1-19.

Petitioner requests this Court to “order the Commonwealth to bring me to trial without further delay!” In the alternative, he suggests that this Court is authorized to remove his prosecution to federal court, where “the state no longer can assert any interest in having trial of the state substantive offense governed by the State’s choice of procedure, for this Court has long provided that federal procedure then obtains.” *Id.* at pp. 16-18.

By Order dated April 6, 2004, Judge Newcomer remanded this matter back to me to order the Respondents to file a response to Petitioner’s habeas claims, addressing his allegation that his right to a speedy trial has been denied. *Order dated April 6, 2004* [Docket Entry No. 9].

On July 19, 2004, the Respondents filed a response. In this response, they argue that Petitioner’s habeas petition should be dismissed for failure to exhaust state remedies. Noting

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<sup>4</sup> Petitioner explains: “‘Harass’ is defined as: ‘to annoy’ or disturb persistently, ‘to make exhausted,’ or to ‘wear out’ (Webster’s Dic.). This is the sum total of how I feel. The Commonwealth has and continues to ‘exhaust me’ mentally, physically, spiritually, financially, and emotionally. I am sick and tired of being ‘stuck in limbo.’ Its like I’m neither dead or alive. I mean I’ve been made to sit YEARS (plural, and literally) in a cage, with my liberty to travel restricted. All in contradiction to my fundamental human/constitutionally protected rights.”

that Petitioner is in pretrial status, with a capital trial scheduled to begin on November 1, 2004, the Respondents assert that the majority of the delay in bringing Petitioner to trial has been caused by the defense and not the prosecutor or the state court. “*Response To Petition For Writ Of Habeas Corpus*” [Docket Entry No. 17].<sup>5</sup>

On August 2, 2004, Petitioner filed a “Response In Opposition To Respondents’ Response.” [Docket Entry No. 18].<sup>6</sup> In this pleading, Petitioner contends that the majority of the delay in bringing him to trial “was due to the judiciary, and must be included in the time in which the Commonwealth must bring a prosecution.” *Petitioner’s Reply* at p. 3. In addition, Petitioner asserts:

1. “So here they [the Respondents] admit that Accusers’ attempt to prosecute is un-constitutional [ . . . ]” because the Respondents have admitted that they have uncovered no evidence that Petitioner was ever indicted by a grand jury, “the U.S. Constitution requires that prosecution of all felonies be by indictment,” and “Petitioner has never waived his rights to have a grand jury pass down indictment.”

2. The Commonwealth will not permit Petitioner to “present my ownself ‘propria persona’ (not pro se).” “Where I demanded months in advance to represent myself, well before the trial date. I should not be held accountable for un-wanted court-appointed counsel’s delay. And denial by Commonwealth of this right is proof of an ‘intentional bad-faith activity.’ Especially where delay, to place well over the time is considered presumptively prejudicial and violates speedy trial. Where I made known that I wanted to represent-self, trial should have proceeded as scheduled. Due to this, the Commonwealth has caused an unnecessary delay (not allowing me to represent myself), and should be look at as their own fault, or as some tactic to gain an advantage over accused. Or at least ‘negligence’ on their part.”

3. “I was arrested on 1-12-01, and due to the ‘negligence’ of Commonwealth my ‘pre-trial’ conference wasn’t held until 9-20-01! This in itself is a violation of speedy trial. Where trial should have been brought before 7-11-01 see: Respondents answer exhibit E, which therein it is estimate Rule 1100 (now 600) run date as 7-11-01. (see my exhibit A). I shouldn’t be held for any delays. All delays were over my objection. I wasn’t allowed to ever enter

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<sup>5</sup> Hereinafter “Commonwealth’s Response.”

<sup>6</sup> Hereinafter “Petitioner’s Reply.”

courtroom which is a violation of Pa. Rules Crim. Proc. 602: ‘A defendant has the right to be present through out all trial proceedings.’”

4. “The trial court should rearrange its docket, when judicial delay has caused a lengthy postponement beyond the period prescribed by Rule 600, or one that implicates the constitutional right to a speedy trial [ . . . ]”

5. “Respondents in number 4 argue I haven’t exhausted state court remedies. But, how could I when they never respected my other petitions I put in. Firstly, I made a good faith effort to let them know that their (Commonwealth’s) papers that were presented to me had ‘defects in process.’ ‘All documents were received but not accepted.’ And, 2<sup>nd</sup> they do not have jurisdiction over me, a ‘free Moorish sovereign.’” Petitioner argues that he was repeatedly explained to the Respondents that they have no jurisdiction over him because he is a Moor who has a title of nobility and, as such, is not subject to the Commonwealth’s jurisdiction. In addition, Petitioner states that the Respondents have failed to identify him by the proper name: “Haru-Bey an indigenous free-sovereign Moor and true noble of the Al-Moroccan Empire.”

6. Petitioner asserts he is not a citizen of the Republic and denies any type of contract/agreement between him and the Commonwealth. He contends that the Respondents are denying him his right to his nationality and status which is a human rights violation.

7. Petitioner argues that the “comdity” doctrine does not give the Commonwealth jurisdiction, and, in the alternative, the state court has already addressed the matter of the lack of jurisdiction. “Commonwealth has had an ample amount of time to address my plea of abatement and jurisdictional challenge, and is in default now and forever. Therefore, they have passed upon the matter.”

8. “I have demonstrated many ‘extra-ordinary circumstance’ namely all of the above. Denial of human rights, violation of constitutional rights including my protection under treaty. All of which is ‘intentional activity’ which demand issuance of the writ of habeas corpus.”

*Petitioner’s Reply* at pp. 1-22.

## DISCUSSION

Under 28 U.S.C. §2241, federal courts have jurisdiction to issue a habeas writ before a judgment is issued in a state criminal proceeding. *Moore v. DeYoung*, 515 F.2d 437, 441-42 (3d Cir. 1975). However, “[. . .] that jurisdiction without exhaustion should not be exercised at the pre-trial stage unless extraordinary circumstances are present.” *Id.* at 443 (3d Cir. 1975)(citing, *inter alia*, *Frisbie v. Collins*, 342 U.S. 519, 520-21 (1952)).

While it has not defined the parameters of the “extraordinary circumstances” exhaustion exception, the Third Circuit has stated that the habeas petitioner must present allegations that “reveal that quality of delay, harassment, bad faith or other intentional activity which, in an appropriate situation, might constitute an ‘extraordinary circumstance’, justifying pre-exhaustion federal habeas relief.” *Lambert v. Blackwell*, 134 F.3d 506, 517 (3d Cir 1997)(quoting *Moore v. DeYoung*, 515 F.2d at 447 n.12 (3d Cir. 1975)), *cert denied*, 532 U.S. 919 (2001).

In determining whether a pre-trial petitioner has met the exhaustion requirements, the habeas court must determine whether the petitioner is attempting to enforce a state’s constitutional obligation to bring him to trial, or whether he is trying to abort a state proceeding. *Graham v. Brooks*, Civ.A. 04-150, 2004 WL 2435141 at \*5 (D.Del. November 1, 2004).

“If a petitioner is asking the state courts to enforce ‘the state’s constitutional obligation to bring him promptly to trial,’ and he has ‘made repeated demands’ of this request on the state courts, then the interests underlying the exhaustion requirement are satisfied, despite the fact that the petitioner has not yet been convicted. *Braden*, 410 U.S. [484] at 489-90. Federal habeas review will not be foreclosed on exhaustion grounds because ‘[a] federal habeas corpus action at this time and under these circumstances does not jeopardize any legitimate interest of federalism.’ *Id.* at 491-92.

In contrast, when a petitioner is attempting to ‘abort a trial in the state courts’ by seeking to dismiss pending state charges, to grant habeas review would be to permit premature litigation of constitutional defenses in federal court. [footnote omitted] *Id.* at 493.”

*Id.*

In the instant case, copies of Petitioner’s state court records (attached to the Commonwealth’s Response) show that he was arrested on January 12, 2001 and charged with first degree murder, robbery and related offenses for his role in the robbery and shooting death of

Martin McConigley, and the robbery of Mr. McConigley's business partner, Shaun S. Clanton,  
on

October 22, 1999. Petitioner's preliminary hearing was held on March 27, 2001.

*Commonwealth's Response: Exhibits "A" (Court History) and "B" (N.T. 3/27/01) at pp. 4-19.*

On July 3, 2001, at the request of Petitioner's court appointed counsel, the trial court authorized the appointment of a second attorney as co-counsel and mitigation specialist for the penalty phase of Petitioner's capital trial. *Id.: Exhibit "C" (July 3, 2001 Order).*

The Court history attached to the Commonwealth's response shows the following:

On April 18, 2001, May 16, 2001, and June 6, 2001, Petitioner's case was continued for pretrial preparations. The continuances were marked "time ruled excludable."

On July 3, 2001, the case was "spun out to Judge Poserina for scheduling conference."

On July 19, 2001, trial was listed for April 19, 2002. Again, the delay was marked "time ruled excludable."

On September 12, 2001, and September 14, 2001, Petitioner's case was continued "for further pretrial conference."

At a September 20, 2001 pre-trial conference, Petitioner's case was listed for trial on April 18, 2002; the attorneys were attached.

On April 18, 2002, Petitioner's case was listed with the case of CP 0110-913.<sup>7</sup>

At an October 20, 2002 listing, Petitioner's case was re-listed on March 10, 2003, with notation: "Both sides ready. Commonwealth will not sever. Time ruled excludable."

On March 10, 2003, there was a defense request to continue because defense counsel was unavailable due to health reasons. The time was ruled excludable and the case was re-listed on December 8, 2003, the "earliest possible date."

At a June 30, 2003 listing, the notation "trial date remain" was made.

On December 8, 2003, the case was "listed for status. 3 p.m. Court busy with jury trial Com v. Terrance Jackson." Petitioner's case was relisted on December 22, 2003.

*Exhibit "E" (Trial court status sheets).*

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<sup>7</sup> While not stated in the record, it appears that CP 0110-913 refers to charges against a co-defendant, Marlon Pitter. *Commonwealth's Response: Exhibit "B" (N.T. 3/27/01).*

The Court history provided ends at December 8, 2003. However, in their response, filed on July 19, 2004, Respondents noted that Petitioner's capital trial was scheduled to begin on November 1, 2004 before the Honorable Gary Glazer.

A check to the website of the Court of Common Pleas of Philadelphia County appears to indicate that Petitioner's trial did not begin on November 1, 2004, but has been re-listed for April 18, 2005.

The Respondents assert that they "have uncovered nothing in the record suggesting that petitioner, either *pro se* or through counsel, requested a speedy trial." *Commonwealth's Response* at pp. 8-9.

In his reply to the Commonwealth's Response, Petitioner has submitted copies of four documents which suggest that he may have requested a speedy trial. In a letter, dated March 13, 2003, addressed to his court-appointed counsel, Petitioner writes: "I also want to remind you to file a motion for Rule 600. I demand a speedy trial, and I am entitled to that. Right now I have over two years in on this case, and the D.A. pushed the trial date to December 8<sup>th</sup>. This is unacceptable." *Petitioner's Reply: Exhibit "E."*

In a letter, which is addressed to Judge Glazer, and upon which it written "mailed off 3/01/04," Petitioner writes: "I am writing to you to inform you, that my constitutional rights have been and continue to be violated. For one, I have been oppressively held in pre-trial incarceration for over three (3) years. Which is a blatant violation of my speedy trial rights. I have never given acquiescence or requested a post-ponement at any stage." *Id.*

In a letter addressed to Judge Steven Geroff, dated April 18, 2003, Petitioner's mother states that Petitioner who was arrested on January 13, 2001 has not yet been tried, and

complains, *inter alia*, that her son's trial is way over the 180 days requirement. Petitioner's mother represents that a copy of the letter was sent to her son's court-appointed counsel. *Id.*

In an April 25, 2003 letter to Judge Geroff's law clerk, Petitioner's mother thanks him for a response to her letter, and again raises Rule 600 prompt trial concerns. *Id.*

Based upon the record before me, and the length of delay in bringing Petitioner to trial, a delay which appears to be continuing, I believe I need more information from the Respondents concerning the reasons for the delay, their position, in light of the exhibits attached to Petitioner's reply, as to whether Petitioner has raised speedy trial concerns in the state system, and the current status of the state proceedings.

BY THE COURT:

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M. FAITH ANGELL  
CHIEF UNITED STATES MAGISTRATE JUDGE