

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

CHRISTOPHER CARROLL,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	No. 12-5697
	:	
MARIROSA LAMAS, et al.,	:	
Respondents.	:	

REPORT AND RECOMMENDATION

TIMOTHY R. RICE
U.S. MAGISTRATE JUDGE

October 31, 2012

Petitioner Christopher Carroll, a prisoner at the State Correctional Institution in Rockview, Pennsylvania, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the following reasons, I respectfully recommend Carroll’s claims be denied as non-cognizable and procedurally defaulted.¹

FACTUAL AND PROCEDURAL HISTORY

On August 7, 2008, Carroll pled guilty to two counts of robbery and one count of unauthorized possession of a firearm. See Memorandum at 1, Commonwealth v. Carroll, No. 3089 EDA 2011 (Pa. Super. Ct. July 20, 2012) (“PCRA Appeal Op.”).² The trial court sentenced Carroll to concurrent terms of 10-to-20 years of imprisonment for each robbery count and to a consecutive term of 3-to-6 years for the firearms offense. See id. Carroll did not appeal and his sentence became final on September 8, 2008. See Criminal Docket at 9-10; PCRA Appeal Op.

¹ I may summarily deny Carroll’s petition without requiring a response if “it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief.” Lonchar v. Thomas, 517 U.S. 314, 320 (1996) (quoting Habeas Corpus Rule 4).

² Appended as Exhibit A.

On July 11, 2011, Carroll filed a pro se petition for relief pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. Ann. § 9542 et seq. See PCRA Appeal Op. at 2. The PCRA court subsequently appointed counsel, who filed a No-Merit letter³ and withdrew with the court's permission. See id. On November 1, 2011, the PCRA court dismissed Carroll's petition as untimely. See Opinion at 1, Commonwealth v. Carroll, Nos. 1817-08, 1818-08 (Pa. Ct. Com. Pl. Delaware Mar. 14, 2012) ("PCRA Op.").⁴ The Superior Court affirmed on July 20, 2012. PCRA Appeal Op. at 4. Carroll did not appeal to the Pennsylvania Supreme Court. See Criminal Docket at 11.

On October 4, 2012, Carroll filed a timely federal habeas corpus petition alleging: (1) the PCRA court erred by denying him an evidentiary hearing because his petition was untimely; (2) the trial court failed to conduct a proper plea colloquy;⁵ (3) the trial court imposed a sentence exceeding the sentencing code without placing a reason for the deviation on the record, and (4) trial counsel ineffectiveness for failing to file a motion for reconsideration after he received the illegal sentence.⁶ See Petition for Writ of Habeas Corpus at 6-10 (E.D. Pa. Oct. 4, 2012)

³ PCRA counsel filed the letter in accordance with Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. Ct. 1988) (en banc).

⁴ Appended as Exhibit B.

⁵ Carroll contends his sentence is illegal because the "sentencing judge failed to conduct a separate inquiry on the record to make certain [he] was advised of the terms in the negotiated plea agreement." I have construed this to allege a defective plea colloquy. Petition at 7; see Leamer v. Fauver, 288 F.3d 532, 547 (3d Cir. 2002) (requiring liberal construction of pro se complaints).

⁶ Carroll's petition lists four grounds for relief, but the second ground contains two discrete claims alleging trial court error, and the fourth ground contains a repetitive claim. See Petition at 7, 10. I have renumbered all claims accordingly. See Leamer, 288 F.3d at 547.

(“Petition”) (doc. 1).

For the following reasons, claim one is non-cognizable and claims two, three, and four are procedurally defaulted.

DISCUSSION

I. Non-Cognizable Claim

Habeas review “is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.” Estelle v. McGuire, 502 U.S. 62, 67-68 (1991); Taylor v. Horn, 504 F.3d 416, 448 (3d Cir. 2007); 28 U.S.C. § 2254(a). “[A]lleged errors in collateral proceedings . . . are not a proper basis for habeas relief.” Lambert v. Blackwell, 387 F.3d 210, 247 (3d Cir. 2004). In reviewing a habeas petition, a federal court is limited to evaluating what occurred in the proceedings that resulted in the petitioner’s conviction. See Hassine v. Zimmerman, 160 F.3d 941, 954 (3d Cir. 1998) (“[W]hat occurred in the petitioner’s collateral proceeding does not enter into the habeas calculation.”) (emphasis omitted).

In his first claim, Carroll essentially argues that the PCRA court should not have barred his petition as untimely because he received “new found information,” i.e., the sentencing guidelines, and has acted diligently since he discovered this information, which he now believes resulted in an allegedly excessive sentence. See Petition at 6. Such a contention is not cognizable as a stand-alone claim for habeas relief because it challenges the collateral court’s decision, instead of the proceedings that led to the conviction.⁷ See Lambert, 387 F.3d at 247.

⁷ Carroll cites no constitutional provision or other federal law as support for this claim. See Habeas Pet. at 6. I will interpret his first claim as an effort to overcome the bar precluding consideration of the claims I conclude are procedurally defaulted. See discussion § II, infra; cf. Leamer, 288 F.3d at 547 (requiring liberal construction of pro se complaints).

II. Procedurally-defaulted claims

A federal court may not grant habeas relief to a state prisoner unless the prisoner has exhausted his available remedies in state court. 28 U.S.C. § 2254(b); Nara v. Frank, 488 F.3d 187, 197 (3d Cir. 2007). A state prisoner must complete the state’s established appellate review process to “give the state courts one full opportunity to resolve any constitutional issues.” O’Sullivan v. Boerkel, 526 U.S. 838, 839 (1999). A petitioner “shall not be deemed to have exhausted the remedies available . . . if he has the right under the law of the State to raise, by any available procedure, the question presented.” 28 U.S.C. § 2254(c).

A claim for federal habeas relief is procedurally defaulted “if [a] petitioner failed to exhaust state remedies and the court to which the petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred.” Coleman v. Thompson, 501 U.S. 722, 735 n.1 (1991). Similarly, procedural default occurs when a petitioner presents the claim in the state system, but the state court refuses to address the claim on its merits because of “a state-law ground that ‘is independent of the federal question and adequate to support the judgment.’” Cone v. Bell, 129 S. Ct. 1769, 1780 (2009) (quoting Coleman, 501 U.S. at 729). The purpose of the procedural default rule is to prevent habeas petitioners from avoiding the exhaustion doctrine by defaulting their claims in state court. Coleman, 501 U.S. at 732.

An issue is waived if a petitioner fails to raise it and the issue could have been raised before trial, at trial, on appeal, in a habeas corpus proceeding, or in a prior proceeding. 42 Pa. Cons. Stat. § 9544(b); see also Sistrunk v. Vaughn, 96 F.3d 666, 671 n.4 (3d Cir. 1996) (“[T]he

[Pennsylvania Rules of Appellate Procedure] dictate that an issue raised at the trial level but not preserved on appeal will not be considered by any subsequent appellate court.”); Commonwealth v. D’Collanfield, 805 A.2d 1244, 1246 (Pa. Super. Ct. 2002) (holding an issue not preserved on appeal was waived). Moreover, state collateral actions must be filed within one year of the date on which the conviction became final. 42 Pa. Cons. Stat. § 9545(b)(1).

Such state law waiver and PCRA statute of limitation rules are independent and adequate state law grounds that bar federal habeas review. Peterson v. Brennan, 196 F. App’x 135, 142 (3d Cir. 2006) (not precedential); Whitney v. Horn, 280 F.3d 240, 252 (3d Cir. 2002). These are rules of general applicability which are “firmly established, readily ascertainable, and regularly followed.” See Leyva v. Williams, 504 F.3d 357, 366 (3d Cir. 2007) (quoting Szuchon v. Lehman, 273 F.3d 299, 327 (3d Cir. 2001)); but see Bronshtein v. Horn, 404 F.3d 700 (3d Cir. 2005) (petitions in capital cases filed before PCRA statute of limitations was firmly established and regularly followed by Pennsylvania courts not barred).

A. Claims Raised in State Court

Carroll previously raised trial court error regarding its imposition of an excessive sentence without a reason for the deviation (claim 3) and ineffective assistance of counsel for failure to file a motion for reconsideration (claim 4), but the PCRA court dismissed his petition as untimely. See PCRA Op.; PCRA Appeal Op. Carroll failed to file his state petition within one year from the date his conviction became final, that is, September 8, 2009. See Criminal Docket at 8 (showing PCRA petition filed July 2011); 42 Pa. Cons. Stat. § 9545(b)(1) (imposing one-year filing deadline). Therefore, Carroll’s claims are procedurally defaulted because he failed to timely present them in state court, and independent and adequate state law grounds now

preclude state court review. See Coleman, 501 U.S. at 729; Whitney, 280 F.3d at 252.

B. Claim Never Raised in State Court

Carroll never presented to the state courts his claim that the trial court failed to conduct a proper plea colloquy (claim 2). See PCRA Appeal Op. at 3 (listing PCRA petition claims); Nara, 488 F.3d at 198 (explaining exhaustion requirement). Carroll is now well beyond the one-year limitations period for filing an additional PCRA petition, rendering his claims procedurally defaulted. By failing to properly present them to the state courts, his claims were waived, and independent and adequate state law grounds now preclude state court review. See 42 Pa. Cons. Stat. § 9545(b)(1); 28 U.S.C. § 2254(b); Coleman, 501 U.S. at 729.

C. Cause, Prejudice, or Miscarriage of Justice

Carroll may obtain federal habeas review of his defaulted claims only if he can “demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider these claims will result in a fundamental miscarriage of justice.” Coleman, 501 U.S. at 750; Smith v. Murray, 477 U.S. 527, 533 (1986). These requirements are grounded in the need for finality and comity, to ensure state courts have an adequate opportunity to review a case on the merits. Smith, 477 U.S. at 533.

To demonstrate cause sufficient to excuse default, Carroll must prove “some objective factor,” impeded efforts to comply with the State's procedural rule such as interference by government officials -- and “that the factual or legal basis for a claim was not reasonably available.” McClesky v. Zant, 499 U.S. 467, 494 (1991). To establish prejudice, Carroll must show “actual prejudice resulting from the errors of which he complains.” Id. (quoting United States v. Frady, 456 U.S. 152, 170 (1982)).

Carroll argues his claims should not be procedurally defaulted because he only became aware of “[e]xculpatory evidence” on May 10, 2011, when he received copies of the sentencing guidelines forms. See Petition at 14. He contends he has been diligent in pursuing his alleged sentencing error since he discovered it. See Petition at 6. Carroll, however, has not shown interference by government officials or that the sentencing guidelines were not discoverable earlier. See McClesky, 499 U.S. at 494. I find no cause or prejudice to excuse the default of Carroll’s claims, nor has he established failure to consider his claims will result in a fundamental miscarriage of justice.⁸ See id. Carroll failed to properly preserve his claims in the state court; thus, they are procedurally defaulted.

Accordingly, I make the following recommendation:

⁸ To establish the requisite “fundamental miscarriage of justice,” as an alternative to showing cause and prejudice, Carroll must demonstrate “actual innocence.” Schlup v. Delo, 513 U.S. 298, 324 (1995); Houck v. Stickman, 625 F.3d 88, 93 (3d Cir. 2010). Carroll has not claimed actual innocence.

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ORDER

MITCHELL S. GOLDBERG, J.

AND NOW, this day of , 2012, upon careful and independent consideration of the petition for a writ of habeas corpus, and after review of the Report and Recommendation of United States Magistrate Judge Timothy R. Rice, IT IS ORDERED that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The petition for a writ of habeas corpus is DENIED with prejudice.
3. There is no probable cause to issue a certificate of appealability.
4. The Clerk of the Court shall mark this case closed for statistical purposes.

BY THE COURT:

MITCHELL S. GOLDBERG, J.