

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

H. BEATTY CHADWICK : CIVIL ACTION
v. :
JOHN DOUGLAS CAULFIELD, et al. : NO. 03-4793

MEMORANDUM and ORDER

Norma L. Shapiro, J.

October 20, 2003

H. Beatty Chadwick ("Chadwick") has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 to challenge his continued incarceration for civil contempt. In his petition, Chadwick argues that he has been denied due process because: (1) he was and is unable to comply with a state order of which he has been adjudged in contempt; and (2) he was denied a jury trial on the issue of his ability to comply. Chadwick contends that this is not a "second or successive petition" so it does not require permission to file from the Court of Appeals under 28 U.S.C. §2244. For the reasons stated below, Chadwick's petition is dismissed as a "successive petition."

Procedural History

This is Chadwick's sixth federal habeas petition. On April 7, 1995, Chadwick an emergency motion to quash a state court bench warrant and release him from Delaware County Prison because the state court contempt finding was improper under state law.

This court declined to intervene in a pending state court proceeding under Younger v. Harris, 401 U.S. 37 (1971) and progeny. See, Chadwick v. Delaware County Court of Common Pleas, No. 95-0103, 1995 U.S. Dist. LEXIS 5130, *1 (E.D. Pa. Apr. 19, 1995).

Chadwick had filed, and the state trial court had denied, six state petitions for habeas relief, when Chadwick appealed one of the state trial court's denials. Before the appeal was decided, Chadwick filed a second federal habeas petition; this court dismissed Chadwick's second federal habeas petition for failure to exhaust available state remedies because the issues had not yet been presented to the Pennsylvania Supreme Court. See Chadwick v. Hill, No. 95-0103, 1995 U.S. Dist. LEXIS 13081, *3(E.D. Pa. Sept. 8, 1995).

Several appeals of state trial court denials of Chadwick's habeas petitions and a motion to vacate state court orders were then consolidated on appeal to the Pennsylvania Superior Court. Because of the pending appeal, this court dismissed Chadwick's third federal habeas petition for failure to exhaust available state remedies. See Chadwick v. Hill, No. 96-6426, 1997 U.S. Dist. LEXIS 512, *5 (E.D. Pa. Jan. 16, 1997).

On July 18, 1997, Chadwick filed his fourth federal habeas petition, alleging that his continued detention in the Delaware County Prison served a punitive purpose only so that he must be

afforded due process for criminal sanctions. Because Chadwick had declined to seek available Supreme Court review of the Pennsylvania Superior Court's April 23, 1997 decision, affirming the trial court's denial of Chadwick's sixth state habeas petition, his petition was dismissed again for failure to exhaust available state remedies. Chadwick v. Andrews, No. 97-4680, 1998 U.S. Dist. LEXIS 6123, *15 (E.D. Pa. Apr. 30, 1998).

On March 2, 2000, Chadwick filed his fifth federal habeas petition alleging that his imprisonment was impermissibly punitive and that he had been denied due process because: (1) he was and is unable to comply with a state court order of which he has been adjudged in contempt; (2) he was denied a jury trial and other procedural rights; (3) he was imprisoned after a summary proceeding; (4) his imprisonment has become punitive; (5) he was imprisoned for failure to pay money; (6) his civil imprisonment is indefinite; (7) the imprisonment order is facially unlawful; (8) the state court ordering the incarceration lacked jurisdiction; and (9) he was denied a prompt appeal. H. Beatty Chadwick v. James Janecka, No. 00-1130, 2002 U.S. Dist. LEXIS 10, *1-*2 (E.D. Pa. Jan. 3, 2002). This court, concluding that his confinement had become punitive and no longer served its coercive force, granted the petition. Chadwick v. Janecka, 2002 U.S. Dist. LEXIS at *22-23.

On August 20, 2002, the Court of Appeals for the Third

Circuit, applying the standards set forth in 28 U.S.C. §2254(d)(1), reversed the judgment because there was no Supreme Court precedent limiting the length of time a person may be confined for civil contempt. Chadwick v. Janecka, 312 F.3d 597, 613 (3d Cir. 2002). The opinion stated "[o]ur decision does not preclude Chadwick from filing a new federal habeas petition if he claims that he is *unable* for some reason to comply with the state court's order." Id., at 614. Relying on this language, Chadwick filed the present action on August 21, 2003.

Discussion

The Antiterrorism and Effective Death Penalty Act, 28 U.S.C. §2244(b)(1), requires that a "claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." In order to file a second or successive habeas petition, "the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. §2244(3)(a).

Chadwick alleges that the instant petition is not "second or successive" within the meaning of 28 U.S.C. §2244 because the "ground for relief was not adjudicated in the earlier habeas proceeding." He reasserts claims made in the prior habeas petition before this court: (1) he was unable to comply with a

state court order of which he had been adjudged in contempt; and (2) he was not afforded a jury trial on the issue of ability to comply.

While reversing the grant of Chadwick's last petition, the Court of Appeals agreed with the determination that Chadwick had the present ability to comply with the state court order:

the District Court properly proceeded on the assumption that Mr. Chadwick has the present ability to comply with the July 1994 state court order. The state courts have repeatedly so found. Under 28 U.S.C. §2254(e)(1), the District Court was bound by these state court factual determinations, absent rebuttal of the presumption of correctness by clear and convincing evidence. The District Court acknowledged that the record demonstrates that the state court findings were not erroneous, and the District Court stated that it was 'convinced that [Mr.] Chadwick has the present ability to comply with the July 22, 1994 order. Chadwick v. Janecka, 312 F.3d at 612, citing Chadwick v. Janecka, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *19 (E.D. Pa. Jan. 3, 2002).

Chadwick's assertion that the Court of Appeals was "convinced that the issue of Chadwick's ability to comply and the evidence, or lack thereof in support of it, had not been adjudicated by the District Court" is simply not true. Petitioner's Memorandum in Support of Petition For Writ of Habeas Corpus, at 9. The Court of Appeals approved the district court finding that state court orders had more than adequately established Chadwick's present ability to comply with the state court order. The Court of Appeals statement that Chadwick could file a new federal habeas petition if he claims he is unable to comply with the state court

order is understood by the district court to refer to present inability to pay, based on new evidence establishing current insolvency. The petitioner complains of procedural inadequacies in determining his past ability to pay, already rejected by this court and the Court of Appeals, but he still does not allege he is actually unable to pay.

Chadwick's reliance on Stewart v. Martinez-Villareal, 523 U.S. 637 (1998), and the related case Slack v. McDaniel, 529 U.S. 473 (2000) is misguided. Where a habeas petition has been dismissed by the district court without prejudice as premature (Stewart) or unexhausted (Slack) and then refiled once the claim became ripe for adjudication, the later petition is not new since the merits of the claim had never been reviewed by a federal court. Stewart, 523 U.S. at 645; Slack, 529 U.S. at 490.

The instant petition is not similarly procedurally situated. The Stewart and Slack courts made clear that their holdings only applied to claims which had been dismissed for procedural reasons. Stewart, 523 U.S. at 645, Slack, 529 U.S. at 487. In this Circuit, both Stewart and Slack have only been applied to petitions dismissed for purely technical procedural reasons, and not substantive deficiencies of the claim. See Harris v. United States, No. 02-6825, 2002 U.S. Dist. LEXIS 24439 *10-*11 (E.D. Pa. Dec. 20, 2002); Bouie v. Varner, No. 00-4846, 2002 U.S. Dist. LEXIS 8132, *7, n.3 (E.D. Pa. May 7, 2002).

Unlike Stewart and Slack, Chadwick's instant claims were not dismissed for technical procedural reasons such as exhaustion or ripeness. Rather, this court agreed with the Report and Recommendation of Magistrate Judge Rapoport that, "Chadwick was not denied due process for any of the reasons alleged...[and] he is not entitled to habeas relief on any of the other grounds asserted in his petition." Chadwick v. Janecka, No. 00-1130, at *25. The court was not required to articulate its reasoning for its denial, and its failure to do so does not determine that the claims were not adjudicated by the district court; they are barred by 28 U.S.C. §2244 without permission to proceed from the Court of Appeals.

Conclusion

Chadwick's petition for a writ of habeas corpus is dismissed. The petition is a "second or successive" petition within the meaning of 28 U.S.C. §2244. Under the procedural requirements of 28 U.S.C. §2244(3)(a), Chadwick must petition the Court of Appeals for the Third Circuit for leave to file this petition.

An appropriate order follows.

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ORDER

Norma L. Shapiro, J.

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AND NOW, this 20th day of October, 2003, upon careful and independent consideration of the petition for writ of habeas corpus, it is hereby **ORDERED** that:

Petitioner's Petition for Habeas Corpus is **DISMISSED** for lack of jurisdiction. 28 U.S.C. §2244(3)(a).


S.J.