

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-3389

Ja'Juan Williams

Petitioner - Appellant

v.

Dean Minor, Warden

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:17-cv-00106-ODS)

JUDGMENT

Before WOLLMAN, BOWMAN and LOKEN, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

The motions to proceed in forma pauperis are denied as moot.

May 08, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 12, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JA' JUAN WILLIAMS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 4:17-cv-00106-ODS-P
)	
DEAN MINOR,)	
)	
Respondent.)	

ORDER

Petitioner, a convicted state prisoner currently confined at the Moberly Correctional Center in Moberly, Missouri, has filed *pro se* a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, this petition for federal habeas corpus relief is DENIED and this case is DISMISSED.

I. Background

On June 22, 2015, Petitioner pleaded guilty to two counts of second-degree robbery and unlawful possession of a firearm. Docs. 1 at p. 1; 14-1 at pp. 19-20. On August 10, 2015, Petitioner was sentenced to concurrent terms of fifteen years' and seven years' imprisonment in the Circuit Court of Boone County, Missouri. *Id.* Pursuant to Mo. Sup. Ct. R. 91.01, Petitioner filed a petition for state habeas corpus relief, alleging (1) ineffective assistance of trial counsel due to attorney abandonment and conflict of interest; (2) ineffective assistance of trial counsel and plea counsel due to failure to prepare a defense or present mitigating evidence; (3) actual innocence; (4) jurisdictional defect due to a plea based on false premises and evidence; and (5) prosecutorial misconduct by presenting known false or illegally obtained evidence. Docs. 1 at p. 3; 14-3 at p. 2. The Circuit Court of Randolph County, Missouri denied Petitioner's Rule 91.01

petition (Doc. 14-4) on December 22, 2017, and Petitioner appealed to the Missouri Court of Appeals. On February 3, 2017, the Missouri Court of Appeals for the Western District denied Petitioner state habeas corpus relief without further explanation. Doc. 14-5.

I. Legal Standard

In conducting habeas review pursuant to 28 U.S.C. § 2254, a federal court is limited to deciding whether a claim that was adjudicated on the merits in state court proceedings (1) resulted in a decision that is contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court, or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d). A federal court may only address the habeas petition of a state prisoner where the decision of the state court “fairly appears to rest primarily on federal law, or to be interwoven with federal law.” *Byrd v. Delo*, 942 F.2d 1226, 1231 (8th Cir. 1991) (citing *Coleman v. Thompson*, 501 U.S. 722, 735 (1991)). Federal habeas review of a state claim is “limited to federal constitutional errors.” *James v. Bowersox*, 187 F.3d 866, 869 (8th Cir. 1999).

II. Analysis

Petitioner asserts the following five grounds for federal habeas corpus relief: (1) procedural defects in the state habeas litigation; (2) ineffective assistance of trial counsel due to attorney abandonment and a conflict of interest; (3) ineffective assistance of plea counsel due to a failure to properly prepare a defense or present mitigating evidence; (4) jurisdictional defect in that the trial court accepted a guilty plea predicated upon false premises and evidence; and (5) prosecutorial misconduct by knowingly presenting false or illegally obtained evidence to the trial court. Docs. 1 at pp. 5-6, 10-12; 14 at p. 2.

Respondent argues Ground 1 is not a cognizable claim for federal habeas relief under § 2254. Additionally, Respondent contends that Grounds 2 and 3 are procedurally defaulted by Petitioner's failure to timely file a motion pursuant to Mo. Sup. Ct. R. 24.035, and that Grounds 4 and 5—trial court error—are waived by Petitioner's guilty plea. The Court addresses these arguments below.

A. Ground 1 is not a cognizable claim for federal habeas review.

In Ground 1, Petitioner seeks federal habeas relief on the argument that the state habeas corpus proceeding was procedurally flawed which violated Petitioner's constitutional right to due process. Doc. 1 at 5. However, federal habeas review in this action is expressly limited to determining whether the prisoner is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2254(a). In other words, federal habeas courts may only review the "constitutionality of a state criminal conviction, not infirmities in a state post-conviction relief proceeding." *Williams-Bey v. Trickey*, 894 F.2d 314, 317 (8th Cir. 1990).

Because defects in a state post-conviction proceeding ultimately have no bearing on the original state conviction and the constitution does not require a means of post-conviction review of a state conviction, infirmities in such proceedings do not provide cognizable constitutional issues available for federal habeas review. *Williams-Bey*, 894 F.2d at 317; *see Williams v. Missouri*, 640 F.2d 140, 143-44 (8th Cir. 1981) (holding "[e]rrors or defects in the state post-conviction proceeding do not, ipso facto, render a prisoner's detention unlawful or raise constitutional questions cognizable in [federal] habeas corpus proceedings"). Therefore, federal habeas review is unavailable for a challenge to a state post-conviction proceeding that is merely collateral to the petitioner's original conviction and imprisonment. *Williams*, 640 F.2d at 144; *see Jolly v. Gammon*, 28 F.3d 51, 54 (8th Cir. 1994).

Here, Petitioner alleges certain defects in the state habeas corpus proceeding that arguably violated his due process rights. Specifically, Petitioner claims the state habeas court abused its discretion by failing to order an evidentiary hearing which denied Petitioner the right to present newly discovered evidence and by holding a civil trial without Petitioner being present. However, because the state habeas proceeding is merely collateral to and does not directly concern Petitioner's underlying state conviction and does not raise a constitutional claim relating to Petitioner's conviction or custody, this claim is not cognizable under § 2254 and is not reviewable in a federal habeas court. Therefore, Ground 1 is denied.

B. Grounds 2 and 3 are procedurally defaulted.

Next, Petitioner seeks federal habeas relief on the grounds of ineffective assistance of both trial counsel and plea counsel. Respondent argues Petitioner has defaulted on his claims for ineffective assistance of counsel by failing to present the claims in a timely filed Mo. Sup. Ct. R. 24.035 motion. Doc. 14 at p. 4.

Federal habeas review mandates that state prisoners must “exhaust the remedies available in the courts of the State” as a prerequisite for federal habeas review. 28 U.S.C. § 2254(b)(1)(A). “[S]tate prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process” before presenting those issues in an application for habeas relief in federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). “If a petitioner fails to exhaust state remedies and the court to which he should have presented his claim would now find it procedurally barred,” the federal claim is procedurally barred. *Sloan v. Delo*, 54 F.3d 1371, 1381 (8th Cir. 1995).

However, federal habeas review is available notwithstanding the state procedural default where the petitioner demonstrates “cause for the default and actual prejudice . . . [or] show[s]

that failure to consider the claims will result in a fundamental miscarriage of justice.” *Wiles v. Jones*, 960 F.2d 751, 753 (8th Cir. 1992) (citing *Coleman v. Thompson*, 501 U.S. 722, 749-50 (1991)). To show cause for default, a petitioner must show that “some objective factor external to the defense impeded counsel’s efforts.” *Cornman v. Armontrout*, 959 F.2d 727, 729 (8th Cir. 1992) (citing *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

Additionally, the fundamental miscarriage of justice exception is only satisfied with “evidence of [petitioner’s] actual innocence.” *Schleeper v. Groose*, 36 F.3d 735, 735 (8th Cir. 1994) (citing *Sawyer v. Whitley*, 505 U.S. 333, 338 (1992)). Actual innocence must be demonstrated by presenting “new reliable evidence that was not presented at trial” such that it becomes “more likely than not that no reasonable juror would have convicted him in light of the new evidence.” *Weeks v. Bowersox*, 119 F.3d 1342, 1350-51 (8th Cir. 1997). However, the actual innocence exception is a high burden to overcome and requires new evidence such as “exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—[evidence] that was not presented at trial.” *Id.* at 1351 (holding no actual innocence sufficiently alleged to invoke the fundamental miscarriage of justice exception despite alleging that a “staggering amount of evidence exists that proves . . . actual innocence” when petitioner “failed to produce one iota of substance” by failing to submit affidavits from any purported witness, and therefore only produced a “bare, conclusory assertion” of actual innocence).

The Missouri Supreme Court has held that when a defendant is convicted following a guilty plea, Rule 24.035 is the “single, unitary, post-conviction remedy to be used in place of other remedies, including the writ of habeas corpus.” *State ex rel. Nixon v. Jaynes*, 63 S.W.3d 210, 214 (Mo. 2001) (internal citation omitted); see *Vogl v. Missouri*, 437 S.W.3d 218, 226 (Mo. 2014) (Rule 24.035 is the “exclusive procedure by which a person convicted of a felony on a

guilty plea may seek post-conviction relief”). A timely filed motion under Rule 24.035 is therefore a “threshold to achieving post-conviction relief.” *Id.*

Moreover, notwithstanding an exception, “failure to file a timely motion for post-conviction relief in the state court is a procedural default that will bar habeas review.” *Griffini v. Mitchell*, 31 F.3d 690, 692 (8th Cir. 1994). Thus, when a defendant fails to raise an enumerated claim in a Rule 24.035 post-conviction proceedings, the issue is waived and cannot be raised in a subsequent petition for state habeas review. *State ex rel. Nixon*, 63 S.W.3d at 214. Following a plea of guilty, Rule 24.035 is the “exclusive procedure” for challenging a conviction on the grounds of “ineffective assistance of trial counsel, lack of jurisdiction of sentencing court, or that the sentence imposed violates the state or federal constitution.” Mo. Sup. Ct. R. 24.035(a). State habeas review is not a “substitute for . . . post-conviction proceedings.” *State ex rel. Simmons v. White*, 866 S.W.2d 443, 446 (Mo. 1993) (en banc); see *Preston v. Delo*, 100 F.3d 596, 600 (8th Cir. 1996).

Here, Petitioner failed to file a Rule 24.035 motion for post-conviction relief, instead opting to file only a Rule 91 motion for state habeas corpus relief. Under the time provisions established in Rule 24.035(b), based on a sentencing date of August 10, 2015 (Doc. 14-2, p. 1), Petitioner had to file a motion for post-conviction relief on the grounds of ineffective assistance of counsel before February 6, 2016, which is 180 days after the date Petitioner was delivered to state custody. Petitioner is now time-barred under Rule 24.035(b) from filing a motion for post-conviction relief and has therefore procedurally defaulted on his claims of ineffective assistance of counsel. Therefore, Grounds 2 and 3 are procedurally defaulted.

However, federal habeas review may be available regardless of the procedural bar if Petitioner can meet either the cause and prejudice exception or the fundamental miscarriage of

justice exception. Here, Petitioner has not alleged any cause for his failure to seek Rule 24.035 relief. Instead, Petitioner only argues that he believed state habeas corpus review was the “appropriate litigation” as “claims of actual innocence . . . are not cognizable” under a Rule 24.035 claim. Doc. 16, p. 18. In contrast, the sentencing court informed Petitioner of the availability and exclusivity of the Rule 24.035 claim and that it must be filed within 180 days after delivery to the Department of Corrections. *See* Doc. 14-1, pp. 20-21. Petitioner offers nothing to suggest any extraneous or outside factor that kept him from filing a motion under Rule 24.035, and therefore the claim remains procedurally defaulted. *See Scroggins v. Lockhart*, 934 F.2d 972, 975 (8th Cir. 1991).

Lastly, Petitioner has presented no “new evidence” and has alleged nothing more than threadbare conclusory allegations as to his actual innocence. As a result, his claims of innocence here are insufficient to invoke the fundamental miscarriage of justice exception to the procedural bar that would allow federal habeas relief. Therefore, Petitioner’s claims of ineffective assistance of counsel in Grounds 2 and 3 are procedurally defaulted because Petitioner has failed to exhaust available state remedies. Federal habeas relief under § 2254 is unavailable, and Grounds 2 and 3 are denied.

C. Grounds 4 and 5 are waived by Defendant’s guilty plea.

In Grounds 4 and 5, Petitioner seeks federal habeas relief claiming a jurisdictional defect occurred when the trial court accepted Petitioner’s plea that was “predicated upon false premises and evidence” and prosecutorial misconduct by “presenting known false evidence or illegally obtained evidence to the trial court.” Doc. 1, pp. 11-12. Respondent argues Petitioner waived these claims by pleading guilty. Doc. 14, pp. 4-5.

“It is a well-established legal principle that a valid plea of guilty is an admission of guilt that waives all nonjurisdictional defects and defenses.” *United States v. Smith*, 422 F.3d 715, 724 (8th Cir. 2005). Whether a plea is valid depends on whether the guilty plea “represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Hunter v. Bowersox*, 172 F.3d 1016, 1023 (8th Cir. 1999) (citing *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)). While the voluntary and knowing nature of the guilty plea is a “question of federal law,” the “state courts’ underlying findings of fact are entitled to the presumption of correctness.” *Id.* at 1022.

Once a guilty plea is determined to be valid, only issues involving the “trial court’s jurisdiction” may be brought. *Weisberg v. Minnesota*, 29 F.3d 1271, 1279 (8th Cir. 1994). However, “[w]hether an indictment or criminal complaint is sufficient to confer jurisdiction on a state court is a question of state law.” *Id.* Federal habeas review under § 2254 is limited to “review [of] state criminal proceedings for compliance with federal constitutional mandates.” *Johnston v. Luebbers*, 288 F.3d 1048, 1056 (8th Cir. 2002) (citing *Lackawanna Cnty. Dist. Attorney v. Coss*, 532 U.S. 394, 403 (2001)); see 28 U.S.C. 2254(a).

In accepting Petitioner’s guilty plea, the plea court found Petitioner “freely and voluntarily entered [pleas of guilty] . . . understanding [the] nature of [his] charges, range of punishment, and consequences thereof.” Doc. 14-1, p. 16. The guilty plea transcript supports the plea court’s finding that Petitioner knowingly, voluntarily, and intelligently pleaded guilty to both charges. Doc. 14-1, pp. 4-13. Following Petitioner’s knowing and voluntary guilty plea, Petitioner may only bring a jurisdictional challenge, which is not a cognizable claim under the federal habeas courts’ limited jurisdiction in a § 2254 action.

Accordingly, because the state found, based on sufficient support in the record, that Petitioner knowingly and voluntarily pleaded guilty, the trial court's jurisdiction is not a cognizable claim under § 2254. Therefore, Petitioner has waived review on Grounds 4 and 5 by entering his plea of guilty, and these grounds are denied.

III. Conclusion

For the foregoing reasons, Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED and this case is DISMISSED without prejudice.

IT IS SO ORDERED.

/s/ Ortie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

DATED: October 19, 2017

**Additional material
from this filing is
available in the
Clerk's Office.**