

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13260 -F

RHONDA REID,

Petitioner-Appellant,

versus

WALTER DONNELLY,
Baldwin County Chief Parole Officer,
CHIEF GEORGE BOYER,
successor in office as Chief Parole Officer,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

ORDER:

In 2012, Rhonda Reid was convicted in Georgia state court of violating the Georgia Racketeer Influenced and Corrupt Organizations Act. She was sentenced to 20-years imprisonment.

In March 2016, Ms. Reid filed a counseled state habeas petition in the Superior Court of Greene County, Georgia. Five months later, her counsel moved

to withdraw. The state court granted the withdrawal motion, and Ms. Reid filed an amended pro se state habeas petition in August 2016.

In October 2017, while her pro se state habeas petition was still pending, Ms. Reid filed a pro se federal habeas petition under 28 U.S.C. § 2254. The state moved to dismiss Ms. Reid's federal petition, alleging she was still pursuing state postconviction relief and, thus, had not satisfied federal exhaustion requirements.

A Magistrate Judge issued a report and recommendation advising the District Court to dismiss the petition without prejudice. The Magistrate Judge observed that it appeared the Superior Court had yet to rule on Ms. Reid's state postconviction petition, and therefore, her claims were not exhausted. The Magistrate Judge also explained that, in any event, Ms. Reid had not shown she completely exhausted available state remedies. This is because “[i]n Georgia, after a superior court denies a petitioner's state habeas petition, the petitioner must obtain a certificate of probable cause to appeal the denial to the Georgia Supreme Court.” Dolphy v. Warden, Cent. State Prison, 823 F.3d 1342, 1344–45 (11th Cir. 2016). “[W]hen a state habeas petitioner seeks a certificate of probable cause from the Georgia Supreme Court and the Court denies the request, the petitioner's case becomes complete when the Court issues the remittitur for the denial.” Id. at 1345. Ms. Reid had not produced any evidence showing she obtained a certificate of

probable cause or that the Georgia Supreme Court issued a remittitur regarding her petition.

Over Ms. Reid's objections, the District Court adopted the report and recommendation, dismissed her § 2254 petition, and denied her a certificate of appealability ("COA"). Ms. Reid now seeks a COA in this Court, as construed from her notice of appeal.

I.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where the District Court denied a habeas petition on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the District Court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). If the petitioner fails to satisfy either prong of this two-part test, this Court will deny a COA. Id.

A district court may not grant a federal habeas petition unless it appears the petitioner "has exhausted the remedies available in the courts of the State"; "there is an absence of available State corrective process"; or "circumstances exist that render such process ineffective to protect the [petitioner's] rights." 28 U.S.C. § 2254(b)(1)(A)-(B). A petitioner "shall not be deemed to have exhausted the

remedies available in the courts of the State . . . if [s]he has the right under the law of the State to raise, by any available procedure, the question presented.” Id. § 2254(c). “[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.” O’Sullivan v. Boerckel, 526 U.S. 838, 845, 119 S. Ct. 1728, 1732 (1999).

Reasonable jurists would not debate the dismissal of Ms. Reid’s § 2254 petition because she did not fully exhaust available state remedies before filing her federal habeas petition. See 28 U.S.C. § 2254(b)(1)(A)-(B); see also, e.g., Pope v. Rich, 358 F.3d 852, 854 (11th Cir. 2004) (concluding a petitioner “failed to exhaust his state remedies by failing to petition the Georgia Supreme Court for a certificate of probable cause to appeal the denial of his state habeas petition”). Ms. Reid has offered no argument that circumstances render the Georgia courts’ process ineffective to protect her rights. The District Court did not err in dismissing Ms. Reid’s suit without prejudice. Her motion for a COA is therefore **DENIED**.



UNITED STATES CIRCUIT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

RHONDA REID,	:	
	:	
Petitioner,	:	
	:	
VS.	:	
	:	NO. 3:17-CV-00140-CDL-CHW
STATE OF GEORGIA,	:	
	:	
Respondent.¹	:	

ORDER

Petitioner Rhonda Reid has filed an application for federal habeas corpus relief challenging her 2012 conviction in the Superior Court of Greene County, Georgia. In accordance with the Court's previous order to supplement, Petitioner has now explained that she is presently "in custody" for purposes of her request for federal habeas relief because she is on parole until March of 2019, and she will be on probation for thirteen years. Resp. 1, ECF No. 4. It is therefore now **ORDERED** that, within thirty (30) days of the date of this Order, Petitioner amend her petition to include every unalleged

¹ According to the Advisory Committee Notes to Rule 2 of the Rules Governing Section 2254 cases, where a habeas applicant is on parole or probation, "[t]he named respondents shall be the particular probation or parole officer responsible for supervising the applicant, and the official in charge of the parole or probation agency, or the state correctional agency, as appropriate." Documents attached to Petitioner's response appear to identify Baldwin County Chief Parole Officer Walter Donnelly as either Petitioner's parole officer or the official in charge of the parole agency to which Petitioner is required to report. Attach. 1 to Pl.'s Resp. 1, ECF No. 4-1. The Clerk is therefore **DIRECTED** to add Walter Donnelly as a Respondent in this case. Respondent and/or counsel for the Attorney General are **DIRECTED** to inform the Court as to (1) whether Respondent is, in fact, a proper party and (2) whether there are any additional appropriate Respondents in this matter.

APPENDIX B

possible constitutional error or deprivation entitling her to federal habeas corpus relief, failing which Petitioner will be presumed to have deliberately waived her right to complain of any constitutional errors or deprivations other than those set forth in her initial habeas petition. If amended, Petitioner will be presumed to have deliberately waived her right to complain of any constitutional errors or deprivations other than those set forth in her initial and amended habeas petitions.

It is further **ORDERED** that Respondent file an answer to the allegations of the petition and any amendments within sixty (60) days after service of this Order and in compliance with Rule 5 of the Rules Governing Section 2254 Cases. Either with the filing of the answer or within fifteen (15) days after the answer is filed, Respondent shall move for the petition to be dismissed or shall explain in writing why the petition cannot be adjudicated by a motion to dismiss. Any and all exhibits and portions of the record that Respondent relies upon must be filed contemporaneously with Respondent's answer or dispositive motion.

No discovery shall be commenced by either party without the express permission of the Court. Unless and until Petitioner demonstrates to this Court that the state habeas Court's fact-finding procedure was not adequate to afford a full and fair evidentiary hearing or that the state habeas court did not afford the opportunity for a full, fair, and adequate hearing, this Court's consideration of this habeas petition will be limited to an examination of the evidence and other matters presented to the state trial, habeas, and appellate courts.

Pursuant to the memorandum of understanding with the Attorney General of the State of Georgia, a copy of the petition and a copy of this Order shall be automatically

served on the Attorney General electronically through CM/ECF. A copy of the petition and a copy of this Order shall be served by U.S. mail upon Respondent. A copy of this Order shall also be served by the Clerk by U.S. mail upon Petitioner. Petitioner is advised that her failure to keep the Clerk of the Court informed as to any change of address may result in the dismissal of this action.

SO ORDERED, this 21st day of December, 2017.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge