ADDENDUM

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 16-11050-RGS

DEMOND CHATMAN

v.

DOUG DEMOURA

MEMORANDUM AND ORDER ON
PETITION FOR WRIT OF HABEAS CORPUS

October 29, 2018

STEARNS, D.J.

Demond Chatman, an inmate at Massachusetts Correctional Institution in Concord, Massachusetts, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254(d)(2). Chatman challenges the factual determinations made by the Massachusetts courts regarding his competency to stand trial. For the reasons to be explained, the writ will be denied.

BACKGROUND

On January 24, 2002, Chatman was convicted of first-degree murder by a Suffolk Superior Court jury. The facts of the underlying case are taken from the Supreme Judicial Court (SJC)'s decision in *Commonwealth v.*

Chatman, 466 Mass. 327, 328-331 (2013).[1] In February of 2000, Chatman lived with his great aunt in Boston. Chatman was estranged from his mother because, according to family members, he was jealous of his mother's relationship with his two half-sisters. During the course of a February 7, 2000 telephone call between his great aunt and one of the half-sisters, Chatman was overheard in the background saying, "Why do they always have to call here?" Three days later, Chatman called police to report that his mother had been shot. Physical evidence indicated that the mother's body had been moved from Chatman's bedroom to the great aunt's bedroom, and that Chatman had mopped his bedroom floor and loaded his bloody clothing into a washing machine. Chatman denied to police killing his mother, but some of his statements were contradicted by the evidence. The Commonwealth's theory of the case was that the mother had gone to the great aunt's house to confront Chatman about his hostile remark three days earlier, and that Chatman had shot her during the altercation.

On January 31, 2002, Chatman filed a notice of appeal. On May 6, 2008, while his appeal was pending, Chatman filed a motion in the Superior Court for a new trial on competency grounds. A Superior Court judge, who

[1] These facts are presumed to be correct absent "clear and convincing evidence" to the contrary. 28 U.S.C. § 2254(e)(1).

exhibited an understanding of his condition." *Id.* at 848. Chatman's trial counsel, John Bonistalli, testified that while Chatman did not actively participate in the trial, he understood the defense, the charges against him, and the importance of the verdict. Bonistalli also testified that Chatman did not bring up the subject of his mental health nor did Bonistalli observe any indication that Chatman suffered from mental illness.

Dr. Robert Joss was the only mental health specialist who offered an opinion about Chatman's competency at the time of the trial. Dr. Joss interviewed Chatman three and four years after his conviction, reviewed his medical records, and consulted with a clinical social worker and a forensic psychiatrist. Dr. Joss reaffirmed his 2008 affidavit attesting that in his opinion Chatman "lacked competence to stand trial" and would have had problems "rationally understand[ing] the proceedings and . . . assist[ing] counsel." *Id.* at 844. On cross-examination, however, Dr. Joss conceded that Chatman presently had "a rational understanding of the crime for which he was on trial, the important people involved in his prosecution and defense, as well as the consequences of a verdict against him." *Id.* at 852. He also acknowledged that he had not spoken with Bonistalli (Chatman's trial counsel). In its decision, the SJC recognized that Chatman displayed some bizarre assumptions about his trial – including his expectation that his white

defense attorney would have a racial advantage over the prosecutor (who was Asian), and his belief that the prosecutor had deliberately used peremptory strikes to remove homosexuals and white women from the jury who would have favored his acquittal – but concluded that "those misconceptions alone were not enough to show that his rational understanding of the proceedings was compromised." *Id.* at 853.

A court-appointed psychiatrist, Dr. Naomi Leavitt, evaluated Chatman twice between May of 2008 and October of 2011 for competency to participate in the motion hearing. In the first evaluation, she determined that he was competent to participate so long as he did not have to testify. In the second evaluation, she opined that Chatman, who had started taking medication, was competent to participate fully in the hearing. *Id.* at 845.

On March 16, 2016, the SJC affirmed Chatman's conviction. On June 6, 2016, Chatman filed this petition. On May 8, 2018, the court dismissed the petition without prejudice, on the grounds that Chatman failed to exhaust his state court remedies. On June 13, 2018, the court reinstated Chatman's petition, at his attorney's request.

DISCUSSION

"[A] federal court may not issue a habeas petition 'with respect to any claim that was adjudicated on the merits in State court proceedings' unless

the state court decision . . . 'was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" *McCambridge v. Hall,* 303 F.3d 24, 34 (1st Cir. 2002) (quoting 28 U.S.C. § 2254(d) (Supp. II 1996)).[2] Under subsection (d)(2), state court factual findings are "entitled to a presumption of correctness." *Yeboah-Sefah v. Ficco*, 556 F.3d 53, 81 (1st Cir. 2009), citing *Demosthenes v. Baal,* 495 U.S. 731, 735 (1990). A petitioner must rebut the state court factual findings by "clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *see also Companonio v. O'Brien*, 672 F.3d 101, 109 (1st Cir. 2012); *Yeboah-Sefah*, 556 F.3d at 80. While the relationship between the standards enunciated in § 2254(d)(2) and § 2254(e)(1) is not always clearly demarcated, *Companonio*, 672 F.3d at 109 n.6, both standards "'express the same fundamental principle of deference to state court findings.'" *John v. Russo*, 561 F. 3d 88, 92 (1st Cir. 2009), quoting *Teti v. Bender*, 507 F.3d 50, 58 (1st Cir. 2007).

The factual findings at issue here concern whether Chatman was competent to stand trial. In order to find a defendant competent to stand

[2] The other basis for relief – that a state court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" – has not been raised by Chatman. 28 U.S.C. § 2254(d)(1).

prove incompetence to stand trial. *See Commonwealth v. Robbins*, 431 Mass. 442, 448 (2000) ("A defendant may have a mental illness or condition, but still be competent under the *Dusky* test."); *Indiana v. Edwards*, 554 U.S. 164, 178 (2008) (holding that a defendant can be "competent enough to stand trial under *Dusky* but . . . still suffer from severe mental illness").

Second, Chatman argues that it was unreasonable for the SJC to find that he was able to effectively communicate with his attorneys during the trial. While Chatman acknowledges extensive conversations with his trial counsel, he rests on the fact that he never disclosed his mental illness to Bonistalli, which Dr. Joss later concluded was symptomatic of his paranoid state. The SJC, however, rejected Dr. Joss' diagnosis, on the reasonable ground that Dr. Joss never interviewed Bonistalli. Absent exceptional circumstances, it is not open to this court to question a state court's credibility determinations. *See Teti*, 507 F.3d at 59 (1st Cir. 2007) ("[T]he state trial judge's implicit credibility determinations, adopted by the [state appellate court], are exactly the type of factual determinations to which we defer, at least short of any indication of serious error.").

Third, Chatman asserts that the SJC erroneously relied on Department of Correction (DOC) records in reaching its determination that his symptoms "waxed and waned." However, this mischaracterizes the SJC's assessment,

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substantial basis, let alone clear and convincing evidence, to support the contention that the SJC's findings were unreasonable as a matter of law.

ORDER

For the foregoing reasons, Chatman's petition is DENIED and dismissed with prejudice. The Clerk will enter judgment for Respondent and close the case.[3]

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

[3] Chatman is advised that any request for the issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253 of the court's Order dismissing his petition is also DENIED, the court seeing no meritorious or substantial basis supporting an appeal.

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United States Court of Appeals
For the First Circuit

No. 18-2158

DEMOND CHATMAN,

Petitioner, Appellant,

v.

DOUGLAS DEMOURA,

Respondent, Appellee.

Before

Howard, Chief Judge,
Torruella and Kayatta, Circuit Judges.

JUDGMENT

Entered: May 8, 2019

Petitioner seeks a certificate of appealability to appeal the district court's denial of his motion filed pursuant to 28 U.S.C. § 2254. We have reviewed the petitioner's memorandum in support of a certificate of appealability and the record below. Upon review, we conclude essentially for the reasons stated in the district court's memorandum and order, dated October 29, 2018, that petitioner has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

The request for a certificate of appealability is denied and this appeal is terminated. Petitioner's motion to appoint counsel is denied as moot.

By the Court:

Maria R. Hamilton, Clerk

cc:
Demond Chatman, Eric A. Haskell, Eva Marie Badway, Chauncey B. Wood