CLD-274 September 12, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **19-1841**

ANZARA BROWN, Appellant

VS.

WARDEN JAMES T VAUGHN CORRECTIONAL CENTER, ET AL.

(D. Del. Civ. No. 1-16-cv-00070)

Present: CHAGARES, RESTREPO, and SCIRICA, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,

Clerk

ORDER

Brown's application for a certificate of appealability is denied because jurists of reason would not debate the District Court's decision to deny his petition under 28 U.S.C. § 2254. See Miller-El v. Cockrell, 537 U.S. 322, 338 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). More specifically, reasonable jurists would not debate that the claims Brown raised in his § 2254 petition are noncognizable, procedurally defaulted, or meritless for essentially the reasons provided by the District Court. Moreover, jurists of reason would agree that Brown is entitled to no relief on his claim based on our decision in Adams v. Governor of Delaware, 922 F.3d 166 (3d Cir. 2019), because he has not exhausted such a claim and because we would refuse to set aside his conviction under the "de facto officer doctrine," which "confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person's appointment or election to office is deficient." Ryder v. United States, 515 U.S. 177, 180 (1995).

By the Court,

s/Anthony J. Scirica
Circuit Judge

Dated: October 9, 2019
MB/cc: Anzara Brown

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
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October 9, 2019

Anzara Brown
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Anzara Brown v. Warden James T Vaughn Correcti, et al
Case Number: 19-1841
District Court Case Number: 1-16-cv-00070

ENTRY OF JUDGMENT

Today, **October 09, 2019** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ Marianne
Legal Assistant
267-299-4911

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ANZARA BROWN,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 16-70-LPS
	:	
DANA METZGER, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,	:	
	:	
Respondents.[1]	:	

MEMORANDUM OPINION

Anzara Brown. *Pro se* Petitioner.

Kathryn J. Garrison, Deputy Attorney General of the Delaware Department of Justice, Wilmington, Delaware. Attorney for Respondents.

March 25, 2019
Wilmington, Delaware

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[1]Warden Dana Metzger replaced former Warden David Pierce, an original party to the case. *See* Fed. R. Civ. P. 25(d).

STARK, U.S. District Judge:

I. INTRODUCTION

Presently pending before the Court is Petitioner Anzara Brown's ("Petitioner") Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 ("Petition"). (D.I. 3) The State filed an Answer and Amended Answer in opposition. (D.I. 11; D.I. 25) For the reasons discussed, the Court will dismiss the Petition.

II. BACKGROUND

In September 2013, a Delaware Superior Court jury convicted Petitioner of drug dealing Tier I, aggravated possession of a controlled substance, carrying a concealed weapon, possession of a deadly weapon during the commission of a felony, second degree conspiracy, second degree criminal solicitation, and possession of marijuana. (D.I. 11 at 1-2; *see State v. Brown*, 2018 WL 1702888, at *1 (Del. Super. Ct. Apr. 6, 2018). During the sentencing hearing on October 29, 2013, the Superior Court merged the counts of criminal solicitation and second degree conspiracy and sentenced Petitioner as follows: (1) as a habitual offender to two life sentences for the two drug convictions; and (2) to a total of twenty-nine years and six months at Level V, suspended after twenty-seven years, for the remaining convictions. (D.I. 11 at 2-3)

Petitioner appealed. While on appeal, the State learned that an employee of the Office of the Chief Medical Examiner ("OCME"), who had been suspended because of allegations of impropriety related to his handling of evidence, was in the chain of custody for the drug evidence in Petitioner's case. (D.I. 11 at 3) The Delaware Supreme Court remanded the case to provide Petitioner with an opportunity to file a motion for a new trial under Superior Court Criminal Rule 33. (D.I. 14-11 at 1-6) Petitioner filed a Rule 33 motion for new trial. The Superior Court denied Petitioner's Rule 33 motion on December 16, 2014, and voided Petitioner's aggravated possession

conviction because that sentence should have merged with Petitioner's sentence for his drug dealing conviction. (D.I. 14-14 at 1-7) The case was returned to the Delaware Supreme Court, which affirmed the remainder of Petitioner's convictions and sentence on June 17, 2015. *See Brown v. State*, 117 A.3d 568, 581 (Del. 2015).

In September 2015, Petitioner filed a motion for post-conviction relief pursuant to Delaware Superior Court Criminal Rule 61 ("Rule 61 motion"). (D.I. 11 at 3) The Superior Court denied the Rule 61 motion on April 6, 2018. *See Brown*, 2018 WL 1702888, at *10. The Delaware Supreme Court affirmed that judgment on post-conviction appeal in November 2018. *See Brown v. State*, 2018 WL 6181657, at *4 (Del. Nov. 26, 2018).

III. GOVERNING LEGAL PRINCIPLES

A. Exhaustion and Procedural Default

Absent exceptional circumstances, a federal court cannot grant habeas relief unless the petitioner has exhausted all means of available relief under state law. *See* 28 U.S.C. § 2254(b); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842-44 (1999); *Picard v. Connor*, 404 U.S. 270, 275 (1971). The AEDPA states, in pertinent part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –
>
> (A) the applicant has exhausted the remedies available in the courts of the State; or
>
> (B)(i) there is an absence of available State corrective process; or
> (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

28 U.S.C. § 2254(b)(1).

The exhaustion requirement is based on principles of comity, requiring a petitioner to give "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*, 526 U.S. at 844-45; *see Werts v. Vaughn*, 228 F.3d 178, 192 (3d Cir. 2000). A petitioner satisfies the exhaustion requirement by demonstrating that the habeas claims were "fairly presented" to the state's highest court, either on direct appeal or in a post-conviction proceeding, in a procedural manner permitting the court to consider the claims on their merits. *Bell v. Cone*, 543 U.S. 447, 451 n.3 (2005); *see also Castille v. Peoples*, 489 U.S. 346, 351 (1989).

A petitioner's failure to exhaust state remedies will be excused if state procedural rules preclude him from seeking further relief in state courts. *See Lines v. Larkins*, 208 F.3d 153, 160 (3d Cir. 2000); *Teague v. Lane*, 489 U.S. 288, 297-98 (1989). Although treated as technically exhausted, such claims are nonetheless procedurally defaulted. *See Lines*, 208 F.3d at 160; *Coleman v. Thompson*, 501 U.S. 722, 750-51 (1991). Similarly, if a petitioner presents a habeas claim to the state's highest court, but that court "clearly and expressly" refuses to review the merits of the claim due to an independent and adequate state procedural rule, the claim is exhausted but procedurally defaulted. *See Coleman*, 501 U.S. at 750; *Harris v. Reed*, 489 U.S. 255, 260-64 (1989).

Federal courts may not consider the merits of procedurally defaulted claims unless the petitioner demonstrates either cause for the procedural default and actual prejudice resulting therefrom, or that a fundamental miscarriage of justice will result if the court does not review the claims. *See McCandless v. Vaughn*, 172 F.3d 255, 260 (3d Cir. 1999); *Coleman*, 501 U.S. at 750-51. To demonstrate cause for a procedural default, a petitioner must show that "some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." *Murray v. Carrier*, 477 U.S. 478, 488 (1986). To demonstrate actual prejudice, a petitioner must show

"that [the errors at trial] worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." *Id.* at 494.

Alternatively, a federal court may excuse a procedural default if the petitioner demonstrates that failure to review the claim will result in a fundamental miscarriage of justice. *See Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Wenger v. Frank*, 266 F.3d 218, 224 (3d Cir. 2001). A petitioner demonstrates a miscarriage of justice by showing a "constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray*, 477 U.S. at 496. Actual innocence means factual innocence, not legal insufficiency. *See Bousley v. United States*, 523 U.S. 614, 623 (1998). In order to establish actual innocence, the petitioner must present new reliable evidence – not presented at trial – that demonstrates "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." *House v. Bell*, 547 U.S. 518, 537-38 (2006); *see also Sweger v. Chesney*, 294 F.3d 506, 522-24 (3d Cir. 2002).

B. Standard of Review

If a state's highest court adjudicated a federal habeas claim on the merits, the federal court must review the claim under the deferential standard contained in 28 U.S.C. § 2254(d). Pursuant to 28 U.S.C. § 2254(d), federal habeas relief may only be granted if the state court's decision was "contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States," or the state court's decision was an unreasonable determination of the facts based on the evidence adduced in the trial. 28 U.S.C. § 2254(d)(1) & (2); *see also Williams v. Taylor*, 529 U.S. 362, 412 (2000); *Appel v. Horn*, 250 F.3d 203, 210 (3d Cir. 2001). A claim has been "adjudicated on the merits" for the purposes of 28 U.S.C. § 2254(d) if the state court decision finally resolves the claim on the basis of its substance, rather than on a procedural or some other ground. *See Thomas v. Horn*, 570 F.3d 105, 115 (3d Cir. 2009).

The deferential standard of § 2254(d) applies even "when a state court's order is unaccompanied by an opinion explaining the reasons relief has been denied." *Harrington v. Richter*, 562 U.S. 86, 98 (2011). As explained by the Supreme Court, "it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Id.* at 99.

Finally, when reviewing a habeas claim, a federal court must presume that the state court's determinations of factual issues are correct. *See* 28 U.S.C. § 2254(e)(1). This presumption of correctness applies both to explicit and implicit findings of fact, and is only rebutted by clear and convincing evidence to the contrary. *See* 28 U.S.C. § 2254(e)(1); *Campbell v. Vaughn*, 209 F.3d 280, 286 (3d Cir. 2000); *Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003) (stating that clear and convincing standard in § 2254(e)(1) applies to factual issues, whereas unreasonable application standard of § 2254(d)(2) applies to factual decisions).

IV. DISCUSSION

Petitioner timely filed the § 2254 Petition presently pending before the Court, which asserts grounds for relief: (1) the police violated Petitioner's Fourth and Fourteenth Amendment rights under the Delaware and United States Constitutions by admitting the evidence obtained during a pretextual police stop and search of his vehicle; (2)(a) the State failed to establish a chain of custody for the evidence obtained from the police stop under Delaware law; (b) the admission of that drug evidence violated his Fourth Amendment/due process rights and rendered his trial fundamentally unfair; and (c) the State violated *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to disclose the misconduct by OCME employees; and (3) the Superior Court violated the Delaware Constitution and the Fourth Amendment of the United States Constitution by granting the wiretap warrant without probable cause.

A. Claims One and Three: Search and Seizure

In Claim One, Petitioner contends that the admission of the evidence obtained from the vehicle stop violated the Delaware Constitution and the Fourth Amendment of the United States Constitution. More specifically, he asserts that that the evidence obtained from his vehicle during a traffic stop should have been suppressed on the basis that the police violated his Fourth Amendment rights by performing the search without probable cause. In Claim Three, Petitioner contends that the Superior Court violated the Delaware Constitution and the Fourth Amendment of the United States Constitution by granting the wiretap warrant without probable cause. For the following reasons, the Court concludes that Claims One and Three do not warrant relief.

First, portions of Claims One and Three assert that the trial court should have suppressed the evidence obtained from the traffic stop and the wiretap because the police did not comply with the Delaware Constitution and 11 Del. C. § 2407(c)(1). These arguments assert errors of Delaware law that are not cognizable on federal habeas review. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Therefore, the Court will deny the state law arguments in Claims One and Three for failing to assert a proper basis for federal habeas review.

Claims One and Three also assert that the admission of the evidence obtained during the traffic stop and the wiretap violated Petitioner's Fourth Amendment rights. Pursuant to *Stone v. Powell*, 428 U.S. 465, 494 (1976), a federal habeas court cannot review a Fourth Amendment claim if the petitioner had a full and fair opportunity to litigate the claim in the state courts. *See also Wright v. West*, 505 U.S. 277, 293 (1992). A petitioner is considered to have had a full and fair opportunity to litigate such claims if the state has an available mechanism for suppressing evidence seized in or tainted by an illegal search or seizure, irrespective of whether the petitioner actually availed himself of that mechanism. *See U.S. ex rel. Hickey v. Jeffes*, 571 F.2d 762, 766 (3d Cir. 1980); *Boyd v. Mintz*, 631

F.2d 247, 250 (3d Cir. 1980). Conversely, a petitioner has not had a full and fair opportunity to litigate a Fourth Amendment claim, and therefore avoids the *Stone* bar, if the state system contains a structural defect that prevented the state court from fully and fairly hearing that Fourth Amendment argument. *See Marshall v. Hendricks*, 307 F.3d 36, 82 (3d Cir. 2002). However, "an erroneous or summary resolution by a state court of a Fourth Amendment claim does not overcome the [*Stone*] bar." *Id.*

In this case, Petitioner filed pre-trial motions to suppress the evidence obtained during the traffic stop and from the wiretap pursuant to Rule 41 of the Delaware Superior Court Rules of Criminal Procedure. The Superior Court denied the motions after conducting a hearing. Petitioner then challenged these decisions in his direct appeal to the Delaware Supreme Court, presenting similar, if not identical, arguments to those raised in the instant Petition. The Delaware Supreme Court rejected Petitioner's arguments as meritless and affirmed the Superior Court's judgment.

This record clearly demonstrates that Petitioner was afforded a full and fair opportunity to litigate his Fourth Amendment claims in the Delaware state courts. Notably, Petitioner does not (and cannot) allege that a structural defect exists in Delaware's criminal process relating to consideration of search and seizure issues. The fact that Petitioner disagrees with these decisions and/or their reasoning is insufficient to overcome the *Stone* bar. Therefore, the Court will deny Petitioner's Fourth Amendment claims.

B. Claim Two: Drug Evidence Chain of Custody

Claim Two in the original Petition explicitly asserts the following two arguments: (1) the drug evidence was improperly admitted because the State failed to establish a chain of custody under Delaware law; and (2) the admission of the drug evidence violated Petitioner's Fourth Amendment rights. As part of his second argument, Petitioner contends that the arrest of the receiver at the

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ANZARA BROWN,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 16-70-LPS
	:	
DANA METZGER, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,	:	
	:	
Respondents.	:	

ORDER

At Wilmington, this 25th day of March, 2019, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Anzara Brown's Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (D.I. 3) is **DISMISSED**, and the relief requested therein is **DENIED**.

2. Petitioner's Motion to Amend (D.I. 23) is **DENIED**.

3. The Court declines to issue a certificate of appealability because Petitioner has failed to satisfy the standards set forth in 28 U.S.C. § 2253(c)(2). The Clerk shall close the case.

UNITED STATES DISTRICT JUDGE