

SIVA BLACK,
Petitioner,

v.

EDWARD DOLAN,
Respondent.

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United States Court of Appeals For the First Circuit

No. 18-2039

SIVA BLACK,

Petitioner - Appellant,

v.

EDWARD DOLAN, Commissioner of Probation Department,

Respondent - Appellee.

Before

Torruella, Lynch, and Kayatta
Circuit Judges.

JUDGMENT

Entered: December 6, 2019

Pro se petitioner-appellant Siva Black appeals from the judgment of the district court dismissing his 28 U.S.C. § 2254 habeas corpus petition, which presented federal constitutional challenges previously considered and rejected on the merits by the Massachusetts Appeals Court ("MAC"), Commonwealth v. Black, 86 N.E.3d 247 (Mass. App. Ct. 2017) (unpublished table decision), and/or the Supreme Judicial Court of Massachusetts, Black v. Commonwealth, 942 N.E.2d 171 (Mass. 2011). The district court denied Black's claims on the merits but granted a certificate of appealability "as to the petitioner's claims under the 1st, 6th, and 14th Amendments." With his briefs filed with this court, Black has developed two related but distinct claims centered on pre-trial delay. After a careful review of relevant portions of the record and the submissions of the parties, we affirm the district court's judgment of dismissal.

Black pursued before the district court and continues to pursue before this court a standalone federal constitutional challenge to pre-trial competency proceedings and matters related thereto, arguing, among other things, that the proceedings were guided by an unconstitutional bias against Black's religious beliefs and practices. To the extent such a challenge was pursuable at all in light of Black's prior federal habeas activity, see generally 1:11-cv-10751-MLW (D. Mass.), we conclude that dismissal of the claim was proper based on mootness principles and/or the "in custody" requirement of § 2254, as Black was not in custody subject to competency and related

proceedings at the time he filed the underlying § 2254 petition, see generally United States v. Michaud, 901 F.2d 5, 6 (1st Cir. 1990)(explaining "in custody" requirement in habeas cases); see also Williams v. United States, 858 F.3d 708, 714 (1st Cir. 2017) ("As always, we are also free to affirm on any basis apparent in the record, even if it would require ruling on arguments not reached by the district court or even presented to us on appeal.") (internal quotations and brackets omitted); cf. Stanbridge v. Scott, 791 F.3d 715, 721 (7th Cir. 2015) (where petitioner was in custody pursuant to a civil commitment order entered after he had served his criminal sentence, he could challenge the former, but not the latter, by means of a federal habeas proceeding).

With respect to Black's claim that his federal constitutional right to a speedy trial was violated, we conclude that the decision of the MAC "was [not] contrary to, [and did not] involve[] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," nor was the MAC's decision "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)(1)-(2). Specifically, the MAC neither unreasonably applied federal law nor unreasonably determined the relevant facts in concluding that the bulk of the delay in bringing Black to trial was not attributable to the Commonwealth and that the remaining delay did not prejudice Black to an unconstitutional degree. See Barker v. Wingo, 407 U.S. 514, 530 (1972) (applicable standard and general principles).

Accordingly, we affirm the judgment of dismissal of the district court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Siva Black

Maria Granik

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BLACK

Petitioner

V.

DOLAN

Respondent

CIVIL ACTION

NO. 1:18-10135-WGY

ORDER OF DISMISSAL

YOUNG, D.J.

In accordance with the Court's denial of Petitioner's Petition for Writ of Habeas Corpus on October 15, 2018, it is hereby ORDERED that the above-entitled action be and hereby is dismissed.

By the Court,

October 17, 2018
Date

/s/ Jennifer Gaudet
Deputy Clerk

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