

List of Exhibit (Tonia Scott) ✓

A. Petitioner's Memorandum AND Order from United States District Judge Christopher C Conner of the United States District Court for the Middle District of Pennsylvania, which dismissed Petitioner's Petition for Writ of HABEAS, Corpus for failure to exhaust State Court remedies AND stating that a certificate of appealability will not be issued, dated February 29, 2024 (Case No.: 24-CV-0041).

B. Petitioner's ORDER from Circuit Judges Krause, Freedman AND Scirica from the United States Court of Appeals for the Third Circuit that denied Petitioner's "Application for a Certificate of Appealability", "Petition to Join Petitions AND Retention of Jurisdiction", AND "Keiba Harris's Petition to Join Petitions AND Retention of Jurisdiction", dated June 25, 2024 (Case No.: 24-1465).

C. Petitioner's ORDER from Chief Judge Chagares AND Circuit Judges, JORDAN, HARDIMAN, Schwartz, Krause, Restrepo, Bibas, Porter, Matey, Phipps, Freedman, Montgomery-Reeves, Chung AND Scirica from the United States Court of Appeals for the Third Circuit, which denied Petitioner's Petition for Rehearing by the Panel AND the Court en banc, dated September 07, 2024 (Case No.: 24-1465).

(2)

List of Exhibit (Tonia Scott)

D. Petitioner's ORDER from Circuit Judges Krause, Freeman AND Scirica from the United States Court of Appeals for the Third Circuit, which denied Petitioner's Motion for Appointment of Counsel dated September 27, 2024 (Case No.: 24-1465).

E. Petitioner's ORDER from Circuit Judges Krause, Freeman AND Scirica of the United States Court of Appeals for the Third Circuit that granted Petitioner's "Motion to File Exhibits to the Petition for Rehearing" dated September 27, 2024 (Case No.: 24-1465).

F. Petitioner's supporting documents from SCI Wyoming staffers confirming Petitioner's Allegations, relating to mail interference and Petitioner's limited accessibility to legal research at the prison's law library.
(from Respondent Superintendent Wendy K. Nicholas, Deputy Superintendent Frantz, Ms. Williams (the librarian) and Principal Dr. Ryder (supervisor of the law library))

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TONIA SCOTT, : CIVIL ACTION NO. 1:24-CV-41
: :
Petitioner : (Judge Conner)
: :
v. : :
: :
COMMONWEALTH OF :
PENNSYLVANIA, *et al.*, :
: :
Respondents : :

ORDER

AND NOW, this 29th day of February, 2024, upon consideration of the petition (Doc. 1) for writ of habeas corpus, and for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that:

1. The petition (Doc. 1) for writ of habeas corpus is DISMISSED without prejudice for failure to exhaust state court remedies.
2. A certificate of appealability will not issue because jurists of reason would not debate the correctness of this procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000).
3. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner
United States District Judge
Middle District of Pennsylvania

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TONIA SCOTT, : CIVIL ACTION NO. 1:24-CV-41
: Petitioner : (Judge Conner)
: v. :
: :
: COMMONWEALTH OF :
: PENNSYLVANIA, et al., :
: :
: Respondents :
:

MEMORANDUM

This is a habeas corpus case filed pursuant to 28 U.S.C. § 2254. Petitioner, Tonia Scott, seeks to challenge a 2023 criminal conviction and sentence imposed by the Pike County Court of Common Pleas. We will dismiss the petition without prejudice for failure to exhaust state court remedies.

I. Factual Background & Procedural History

Scott was convicted of numerous charges in 2023 and sentenced to an aggregate sentence of 44-94 years' imprisonment. See Commonwealth v. Scott, No.

No. CP-52-CR-0000687-2019 (Pike Cnty. Ct. Common Pleas filed Dec. 13, 2019).¹ Scott appealed to the Pennsylvania Supreme Court on July 26, 2023. Commonwealth v. Scott, No. 80 MAP 2023 (Pa. filed July 26, 2023). The Supreme Court transferred the appeal to the Pennsylvania Superior Court on October 3, 2023. Commonwealth v. Scott, No. 2462 EDA 2023 (Pa. Super. Ct. filed Oct. 3, 2023). On January 2, 2024, Scott announced that she would not be filing a brief in support of her appeal before the superior court. See id. The superior court dismissed Scott's appeal for failure to file a brief on February 21, 2024. Id.

Scott filed the instant case on December 15, 2023, in the United States District Court for the Southern District of New York. (Doc. 1). She contends, *inter alia*, that Pennsylvania courts do not have jurisdiction to convict and sentence her because she is a member of the Saw Creek and Pine Ridge Indian Communities and

The full list of charges for which Scott was convicted includes terrorism with intent to intimidate or coerce a civilian population, conspiracy to commit terrorism to intimidate or coerce a civilian population, kidnapping to facilitate a felony, kidnapping to inflict injury or terror, conspiracy to commit kidnapping to facilitate a felony, false imprisonment, unlawful restraint causing serious bodily injury, robbery causing a threat of immediate serious injury, committing or threatening to commit a felony in commission of a robbery, inflicting or threatening to commit immediate bodily injury in the commission of a robbery, taking property by force in the commission of a robbery, robbery of a motor vehicle, conspiracy to threaten immediate serious injury during the course of a robbery, theft by unlawful taking of movable property, attempted theft by unlawful taking of movable property, conspiracy to commit theft by unlawful taking of movable property, burglary, conspiracy to commit burglary, criminal trespass, criminal mischief, terroristic threats causing serious public inconvenience, terroristic threats with intent to terrorize another, aggravated assault, simple assault, recklessly endangering another person, possession of an incapacitation device, kidnapping for ransom, terroristic threats causing evacuation of a building, unlawful body armor, possession of a weapon. See Scott, No. CP-52-CR-0000687-2019.

the conduct for which she was convicted occurred on tribal land. (Id. at 5). The Southern District of New York transferred the case to this district on January 10, 2024. (Doc. 4).

On January 17, 2024, the court issued an order requiring Scott to show cause as to why the case should not be dismissed for failure to exhaust state court remedies. (Doc. 6). Scott filed two timely responses to the order.² (Docs. 7-8). Scott argues that exhaustion of state court remedies should be excused because her claims of tribal sovereignty are based only on federal law and not state law. (Doc. 8 at 2-4). Scott alternatively argues that she should be deemed to have exhausted state court remedies based on her appeal to the Pennsylvania Supreme Court that was subsequently transferred to the superior court and dismissed by that court. (Id. at 6-7). Scott argues that because “both state courts were sufficiently alerted” to the substance of her federal claims and “accepted and ruled on” the claims they should be “considered fairly presented and sufficient for federal exhaustion purposes.” (Id. at 7).

II. Legal Standard

Under Rule 4 of the rules governing habeas corpus petitions under 28 U.S.C. § 2254, a district court must promptly review a petition and dismiss it if it is plain

² Scott’s first response was not signed by Scott but rather by Mark Marvin, an individual who purports to be acting as “Next Friend, Someone Petitioner, Geneva Convention” for Scott. (Doc. 7 at 8). We have considered the arguments asserted by Marvin in order to give a liberal construction to Scott’s filings. Because the arguments are duplicative of the arguments asserted in Scott’s second response to the court’s order, we will not address them further.

from the face of the petition that the petitioner is not entitled to relief. 28 U.S.C. § 2254 Rule 4.

III. Discussion

Before seeking habeas corpus relief in federal court, a state prisoner must exhaust her remedies in state court. 28 U.S.C. § 2254(b)(1)(A); O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). To do so, the petitioner 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, 526 U.S. at 842. To be deemed exhausted, a federal habeas corpus claim must be “fairly presented” in state court, meaning that the petitioner must present the claim’s “factual and legal substance to the state courts in a manner that puts them on notice that a federal claim is being asserted.” Bronshtein v. Horn, 404 F.3d 700, 725 (3d Cir. 2005) (internal citations and quotation marks omitted). The petitioner must present the claims in state court in accordance with state procedural rules.

Coleman v. Thompson, 501 U.S. 722, 731-32 (1991). When federal claims have not been fairly presented in state court but may still be asserted in state court, dismissal of the claims without prejudice for failure to exhaust state court remedies is appropriate. Lines v. Larkins, 208 F.3d 153, 159-60 (3d Cir. 2000).

We will dismiss this case without prejudice for failure to exhaust state court remedies. Scott has not fairly presented her claims in state court because she has not properly asserted them in accordance with Pennsylvania procedural rules. Her direct appeal to the Pennsylvania Supreme Court was transferred to the Pennsylvania Superior Court because Pennsylvania procedural rules required her

to file a direct appeal from her conviction and sentence to the superior court rather than appealing directly to the supreme court, and she subsequently failed to file a brief in support of her appeal before the superior court.

Scott's argument that exhaustion should be excused because her claims present only issues of federal law is meritless. Scott may not bypass state court merely because she is asserting a federal claim. "State courts, like federal courts, are obliged to enforce federal law. Comity thus dictates that when a prisoner alleges that his continued confinement for a state court conviction violates federal law, the state courts should have the first opportunity to review this claim and provide any necessary relief." O'Sullivan, 526 U.S. at 844; see also Solem v. Bartlett, 465 U.S. 463, 465 (1984) (noting that petitioner asserting that state court conviction and sentence violated tribal sovereignty because petitioner was a member of a tribe and crime occurred on tribal land exhausted state court remedies prior to filing a federal habeas corpus petition).

Dismissal of this case will be without prejudice because Scott may still present her claims in state court in accordance with Pennsylvania procedural rules. Under Pennsylvania Rule of Appellate Procedure 1113, a party may file a petition for allowance of appeal to the Pennsylvania Supreme Court within thirty days after entry of a Pennsylvania Superior Court order. P.A.R.A.P.P. 1113(a). The superior court dismissed Scott's appeal on February 21, 2024. See Scott, No. 2462 EDA 2023. Scott accordingly has until March 22, 2024 to file a petition for allowance of appeal to the Pennsylvania Supreme Court.

Scott may also seek state collateral relief pursuant to Pennsylvania's Post-Conviction Relief Act ("PCRA"), which allows petitioners to seek state collateral relief "within one year of the date the judgment becomes final." 42 Pa.C.S. § 9545(b)(1)(ii). Given that Scott's conviction will not become final until at least March 22, 2024, this limitations period has not yet begun to run. Hence, because Scott may still seek further state court review in accordance with Pennsylvania procedural rules, we will dismiss her petition without prejudice for failure to exhaust state court remedies. See Lines, 208 F.3d at 159-60.

IV. Conclusion

We will dismiss Scott's petition without prejudice for failure to exhaust state court remedies. A certificate of appealability will not issue because jurists of reason would not debate the correctness of this procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). An appropriate order shall issue.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner
United States District Judge
Middle District of Pennsylvania

Dated: February 29, 2024

CLD-138

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 24-1465

TONIA SCOTT, Appellant

VS.

COMMONWEALTH OF PENNSYLVANIA

(M.D. Pa. Civ. No. 1-24-cv-00041)

Present: KRAUSE, FREEMAN, and SCIRICA, Circuit Judges

Submitted are:

- (1) Appellant's Application for a Certificate of Appealability;
- (2) Appellant's Petition to Join Petitions and Retention of Jurisdiction; and
- (3) Keeba Harris's Petition to Join Petitions and Retention of Jurisdiction

in the above-captioned case.

Respectfully,

Clerk

ORDER

The application for a certificate of appealability is denied. Appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Reasonable jurists could not debate the accuracy of the District Court's conclusion regarding Appellant's failure to exhaust her state court remedies. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotation marks omitted) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). Likewise, we deny Appellant's motion to consolidate her appeal with that of Keeba Harris, an appellant pursuing her case in a separate proceeding, No. 24-1557.

Exhibit B

REAGAN BY THE COURT, (C. M. C.)
CIRCUIT JUDGE
s/Anthony J. Scirica
Circuit Judge

Dated: June 25, 2024
PDB/JK/cc: Tonia Scott
All Counsel of Record



A True Copy:

Patricia S. Dodsweit

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

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1465

TONIA SCOTT,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA

(D.C. Civ. No. 1-24-cv-00041)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and SCIRICA*, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

*As to panel rehearing only.

Exhibit C

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Anthony J. Scirica
Circuit Judge

Dated: September 27, 2024
JK/cc: All Counsel of Record
Tonia Scott

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-1465

TONIA SCOTT,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA

(M.D. Pa. No. 1-24-cv-00041)

Present: KRAUSE, FREEMAN and SCIRICA, Circuit Judges

1. Motion filed by Appellant Tonia Scott for Appointment of Counsel for the Petition for Rehearing.

Respectfully,
Clerk/JK

ORDER

The foregoing motion for appointment of counsel is denied.

By the Court,

s/Anthony J. Scirica
Circuit Judge

Dated: September 27, 2024

JK/cc: Tonia Scott

Raymond J. Tonkin, Esq.

Exhibit D

JA

63

Form DC-135A

Commonwealth of Pennsylvania
Department of Corrections

INMATE'S REQUEST TO STAFF MEMBER

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

LIBRARY M/S WILLIAMS

3. By: (Print Inmate Name and Number)

TONIA Scott (PE6818)

T. S. (u.d.)

Inmate Signature

6. Work Assignment:

8. Subject: State your request completely but briefly. Give details.

Ms. Williams,

WHAT IS THE PROBLEM WITH THE LAW LIBRARY, THERE ARE TIMES, WHEN IT IS CLOSED FOR DAYS AND AT TIMES A WHOLE WEEK, THIS HAS BEEN A PROBLEM FOR NEARLY (2) TWO MONTHS? I HAVE AN APPEAL, WHICH IS DUE (SO ARE OTHERS). IS SCI MUNCY INTENTIONALLY ATTEMPTING TO SABOTAGE INMATES' APPEALS?

9. Response: (This Section for Staff Response Only)

WE ARE SHORT STAFFED. THE NEWLY HIRED ASSISTANT IS CURRENTLY IN TRAINING AND WILL HELP WITH COVERAGE ONCE TRAINING IS COMPLETE. YOU ARE ON TODAY'S SCHEDULE. THANK YOU FOR YOUR PATIENCE.

No.

To DC-14 CAR only To DC-14 CAR and DC-15 IRS RECEIVED
NOV 12 2024

STAFF MEMBER NAME _____

Print

Signature

DATE _____

BY:

Exhibit F(1)

Form DC-135A

INMATE'S REQUEST TO STAFF MEMBER

Commonwealth of Pennsylvania
Department of Corrections

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer) Principal Ryder	2. Date: 11/7/24
3. By: (Print Inmate Name and Number) TONIA Scott (P#6818) T.S. (u.d.)	4. Counselor's Name: M3. SANTANA
	5. Unit Manager's Name: Mr. Tolomay
6. Work Assignment:	7. Housing Assignment: JCA 20630

8. Subject: State your request completely but briefly. Give details.

Principal Ryder,
What is the problem with the law library, there ARE times when it is closed for days AND at times A WHOLE WEEK? This HAS been A PROBLEM FOR NEARLY TWO (2) MONTHS? I HAVE AN APPEAL, which is due (SO do others). IS SCI MUNCY INTENTIONALLY ATTEMPTING TO SABOTAGE INMATES' APPEALS?

9. Response: (This Section for Staff Response Only)

We apologize for closings that occur.
We have hired a new librarian
that will support law library
scheduling moving forward.

Take care.

 To DC-14 CAR only To DC-14 CAR and DC-15 IRS

STAFF MEMBER NAME _____

Print

Signature

KOR

DATE 11.12.24

Exhibit F(2)

Form DC-135A

Commonwealth of Pennsylvania
Department of Corrections

INMATE'S REQUEST TO STAFF MEMBER

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

Deputy FRANTZ

3. By: (Print Inmate Name and Number)

TONIA Scott PE 6818

T.S.D.

Inmate Signature

2. Date:

11/7/24

4. Counselor's Name:

Ms SANTANA

5. Unit Manager's Name:

Mr. TOTOMAY

6. Work Assignment:

7. Housing Assignment:

JCA 2063

8. Subject: State your request completely but briefly. Give details.

Deputy FRANTZ,

Twice, I received a notice that my mail from the Supreme Court of the United States was returned to sender (ON 10/31/24 AND 11/6/24). Is this a SCT MUNICY policy to sabotage my mail, coming from this country's highest court?

Also, what is the problem with the law library, there are times when it is closed for days AND at times a whole week; this has been a problem for nearly (2) TWO months? I have an appeal which is due (so are others). Is SCT MUNICY INTENTIONALLY attempting to sabotage inmates' appeals?

(And yes, I contacted the mailroom, Principal Ryder and Ms. Williams.)

9. Response: (This Section for Staff Response Only)

1. I'm not over the mailroom. Capt. Savage is.

2. We hired a new Librarian so the times should be getting back to normal.

To DC-14 CAR only To DC-14 CAR and DC-15 IRS

STAFF MEMBER NAME

Signature

Print

Signature

DATE 11/13/24

Exhibit F(3)

Form DC-135A

Commonwealth of Pennsylvania
Department of Corrections**INMATE'S REQUEST TO STAFF MEMBER****INSTRUCTIONS**

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

Superintendent Nicholas

3. By: (Print Inmate Name and Number)

TONIA Scott (PE6818)

T.S. (u.d.)

Inmate Signature

2. Date:

11/7/24

4. Counselor's Name:

Ms. SANTANA

5. Unit Manager's Name:

Mr. Totoroway

6. Work Assignment:

7. Housing Assignment:

TCA 2063

8. Subject: State your request completely but briefly. Give details.

Superintendent Nicholas

Twice, I received a notice that my mail from the Supreme Court of the United States was returned to sender (on 10/31/24 AND 11/6/24). Is this a SCT money policy to sabotage my mail, coming from this country's highest court?

Also, what is the problem with the law library, there are times, when it is closed for days and at times a whole week; this has been a problem for nearly (2) two months? I have an appeal, which is due (so are others). Is SCT money intentionally attempting to sabotage inmates' appeals?

(AND yes, I contacted the mailroom, Principal Ryker and Ms. Williams)

9. Response: (This Section for Staff Response Only)

I have forwarded your request to Security for review as they oversee mail.

Law Library emails should be addressed with Principal Oliver-Ryker. We have been down a staff member so hours have been reduced.

CC: Principal Oliver-Ryker

Lt. Rohland - Security office

To DC-14 CAR only To DC-14 CAR and DC-15 IRS

STAFF MEMBER NAME _____

Print

Signature

D. M. Shap

DATE

11-15-24

Exhibit F(4)

INMATE'S REQUEST TO STAFF MEMBER**INSTRUCTIONS**

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

MAINTAIN

2. Date:

11/7/24

3. By: (Print Inmate Name and Number)

TONIA Scott (PE6818)T. S. (u/d)

Inmate Signature

4. Counselor's Name:

Mrs. SANTANA

5. Unit Manager's Name:

MR. Tolonay

6. Work Assignment:

7. Housing Assignment:

JAS 2D63

8. Subject: State your request completely but briefly. Give details.

Mailroom

Twice my mail from the Supreme Court of the United States was returned to sender in Notices on 10/31/24 and 11/6/24, is this a SCI Whaley policy to sabotage my mail from this country's highest court?

9. Response: (This Section for Staff Response Only)

No. To DC-14 CAR only To DC-14 CAR and DC-15 IRS

STAFF MEMBER NAME

S. UZIALKO, CAR

Print

Signature

DATE 11/7/2024Exhibit F(5)

INMATE'S REQUEST TO STAFF MEMBER

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

~~MAIL ROOM~~

2. Date:

11/7/24

3. By: (Print Inmate Name and Number)

TONIA Scott (P#818)

T-S.O.D

Inmate Signature

4. Counselor's Name:

Ms. SANTANA

5. Unit Manager's Name:

MR. TOLOMAY

6. Work Assignment:

7. Housing Assignment:

JCA 2063

8. Subject: State your request completely but briefly. Give details.

MAIL ROOM

Since my mail from the Supreme Court of the United States was re-directed to sender, in notices on 10/31/24 AND 11/6/24, is this a SCOTUS policy to sabotage my mail, from this country's highest court?

9. Response: (This Section for Staff Response Only)

ASKED AND ANSWERED.

To DC-14 CAR only To DC-14 CAR and DC-15 IRS

STAFF MEMBER NAME

S. UZIAK, CMI

Print

Signature

DATE 11/7/2024

Attachment 3-A

RTS Postal Mail for SCOTT, TONIA (PE6818)

Housing: J-A

From: SUPREME COURT OF THE UNITED STATES

11/6/24

Please be advised that a piece of mail was received by Smart Communication and is being returned to sender due to the following reason: Books

I have to go to
pa. cor. gov

get a control number

"Legal Mail"

PO Box 180
Waueny 17756

Exhibit F(7)

11/26/24

RTS Postal Mail for SCOTT, TONIA (PE6818)

Housing: J-A

From: SUPREME COURT OF THE UNITED STATES

Please be advised that a piece of mail was received by Smart Communication and is being returned to sender due to the following reason: Books

3

Exhibit F(8)

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