United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 3, 2017

Before

DIANE P. WOOD, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

No. 17-1410

CHARLES HAMILTON, *Petitioner-Appellant,*	Appeal from the United States District Court for the Central District of Illinois.
v.	
CHRISTINE BRANNON, Warden, *Respondent-Appellee.*	No. 1:16-cv-01310-MMM
	Michael M. Mihm, *Judge.*

ORDER

On consideration of the motion for reconsideration filed by petitioner-appellant on September 5, 2017, and construed as a petition for rehearing, all members of the original panel have voted to deny the petition for panel rehearing.

Accordingly, the petition for rehearing is hereby DENIED.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 14, 2017
Decided August 23, 2017

Before

DIANE P. WOOD, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

No. 17-1410

CHARLES HAMILTON, *Petitioner-Appellant,*	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 1:16-cv-01310
CHRISTINE BRANNON, *Respondent-Appellee.*	Michael M. Mihm, *Judge.*

ORDER

Charles Hamilton has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). The district court correctly concluded that Hamilton's claims are procedurally defaulted.

Accordingly, the request for a certificate of appealability is **DENIED.** Hamilton's motion to proceed in forma pauperis is **DENIED.**

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Monday, 23 January, 2017 09:24:02 AM
Clerk, U.S. District Court, ILCD

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

Charles Hamilton,	)	
	)	
Petitioner,	)	
v.	)	Case No. 16-1310
	)	
Christine Brannon,	)	
	)	
Respondent.	)	

ORDER

This matter is now before the Court on pro se Petitioner Charles Hamilton's ("Petitioner") Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1). For the reasons set forth below, the Court DENIES Petitioner's motion. This matter is now terminated.

PROCEDURAL BACKGROUND

In November 2011, a grand jury in McClean County, Illinois charged Petitioner with three felonies: (1) unlawful possession with intent to deliver more than 5,000 grams of cannabis; (2) unlawful possession of cannabis; and (3) cannabis trafficking. ECF No. 22-2. Petitioner was also charged with driving on a suspended license. ECF No. 22-4. Defendant represented himself at a jury trial and, on March 19, 2013, Defendant was found guilty of all charges. ECF No. 22-3 at 18–19; ECF No. 22-4 at 3–4. At sentencing, the trial court considered three prior convictions (one each from Georgia, Florida, and Alabama) and ultimately sentenced petitioner to twenty-two years in prison. ECF No. 22-1.

Petitioner appealed and had appointed appellate counsel. Appellate counsel argued the trial court improperly relied on the Georgia conviction because it actually belonged to

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someone else. ECF No. 22-6.[1] The appellate court affirmed the trial court's reliance on that conviction, reasoning Petitioner had waived the issue despite numerous, "painstaking[]" admonishments by the trial court about avoiding such a waiver.[2] *People v. Hamilton,* 2015 IL App (4th) 130612-U (Feb. 17, 2015), at 5–6.

Petitioner then filed a petition for leave to appeal to the Illinois Supreme Court in which he also argued the trial court improperly relied on the Georgia conviction. ECF No. 22-10. The Illinois Supreme Court denied the petition for leave to appeal, but, under its supervisory authority and without commenting on the appellate court's analysis, issued an order vacating the judgment and remanding the case to the trial court to determine whether the Georgia conviction was properly attributed to Petitioner. ECF No. 22-11. That order specifically noted "only sentencing issues arising on remand may be the subject of a further appeal." *Id.* On remand, the parties agreed the Georgia conviction was not attributable to Petitioner and, accordingly, the trial court reduced Petitioner's sentence by three years. ECF No. 22-3 at 26.

In March 2015, Petitioner filed in the trial court his Petition for Post Conviction or Habeas Corpus Relief. ECF No. 22-13; ECF No. 22-14. The petition, which exceeded 300 pages in length, raised numerous claims, including a claim for ineffective assistance of counsel in which Petitioner argued his appellate counsel should have also challenged the Florida and Alabama convictions on which the trial court originally relied in sentencing Petitioner. ECF No. 22-13 at 2–3. In its order finding Petitioner's habeas petition was

[1] Petitioner submits a copy of a motion he claims was immediately denied in which he sought leave to file a supplemental brief that would have raised more issues than just the trial court's reliance on the Georgia conviction. ECF No. 1 at 2. *See also,* ECF No. 1-1 at 47–49. For the reasons set forth *infra,* page 6, n. 6, however, such an unsuccessful attempt makes no difference in this case.
[2] The distinction between waiver and forfeiture, the court noted, was important, as because Petitioner waived the argument, they did not need to review his claim for plain error. *People v. Hamilton,* 2015 IL App (4th) 130612-U (Feb. 17, 2015), at 5.

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"frivolous and patently without merit" because it "fail[ed] to present the gist of a constitutional claim, the trial court reached the merits of the ineffective assistance of appellate counsel claim, finding Petitioner had failed to show prejudice and that, in any case, he had waived the claim. ECF No. 22-15 at 5–8. The trial court denied relief on all of Petitioner's other claims based on the doctrines of *res judicata* and waiver, citing clear Illinois law which allows a trial court to "summarily dismiss post-conviction petitions based on" either *res judicata* or waiver. *Id.* at 8–9 (citing *People v. Blair*, 215 Ill. 2d 427, 442 (2005)).

Petitioner appealed the trial court's order. His appellate brief was a copy of his original habeas petition; the only change he made was to add a new cover page. *Compare* ECF No. 22-13 at 1–57 *and* ECF No. 22-16. The appellate court dismissed Petitioner's appeal based on state procedural grounds, specifically Illinois Supreme Court Rule 341(h). *People v. Hamilton*, 2016 IL App (4th) 150535-U (Mar. 4, 2016), at 2–3. That rule lays out the proper format for an appellant's brief. IL S. CT. R. 341(h). In analyzing how Petitioner's brief did not comport with the rule, the appellate court noted the brief:

> contains no points and authorities, no recitation of the nature of the judgment appealed from, and no statement of jurisdiction. Although [petitioner] sets forth his version of the facts in this case, he does not support his facts with *any* citations to the record. Additionally, his arguments are not supported by *any* legal authority or citations to the record. There is also no conclusion or prayer for relief. [Petitioner's] filing is not a brief; quite simply, it is a refiling of the petition he filed in the trial court. He does not address the trial court's ruling in the postconviction proceeding, does not tell us how the trial court erred, or provide us with citations to support any error on the part of the trial court.

People v. Hamilton, 2016 IL App (4th) 150535-U (Mar. 4, 2016), at 2–3. The court noted that "[w]here a record is short and the issues simple, [they] will, at times, decline to penalize an appellant for an inadequate brief and consider the issues." *Id.* at 3 (citing *People v. Johnson*, 192 Ill.2d 202, 206 (2000)). Ultimately, however, they concluded that because the record contained twenty-nine volumes, Petitioner raised numerous issues, and Petitioner

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did not cite to the record, they were "not required to do [Petitioner's] work for him." *Id.* at 3. Petitioner filed a petition for leave to appeal to the Illinois Supreme Court, *see generally* ECF No. 22-20, and the Illinois Supreme Court denied that petition on May 25, 2016. *See* ECF No. 22-21.

On August 18, 2016, Petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1). The petition, over 200 pages in length and largely handwritten, lists fourteen grounds based on which he argues he is entitled to relief, namely having his conviction overturned, barring retrial, and compensation for time served and lost property.[3] ECF No. 1 at 1–33. The claims, in general, allege: (1) the court reporter, circuit court clerk, and trial judge engaged in nefarious behavior which led to a denial of Petitioner's right to due process; (2) the prosecution relied on falsified evidence and perjured testimony while refusing to turn over other pieces of evidence; and (3) Petitioner was denied a right to a speedy trial and a proper appeal. On November 22, 2016, the State filed its response (ECF No. 21). The State argues all of Petitioner's claims are procedurally defaulted. *See* ECF No. 21. On December 9, 2016, Petitioner filed his reply (ECF No. 23). This Order follows.

DISCUSSION

As the Court has said at least twice during the course of this litigation, Petitioner appears to be attempting to relitigate his criminal case, which is inappropriate when seeking a writ of habeas corpus. *See* ECF No. 14 at 2; ECF No. 19 at 2. Even if the Court was inclined to sponsor Petitioner's fishing trip, which it is not, it would be improper for it

[3] There are fourteen grounds listed, but the Court has not found Ground Five as written in the Petition. It appears to go from Ground Four on a pre-printed form (ECF No. 1 at 9–14) to Ground Six in a handwritten addendum (starting at ECF No. 1 at 15). Nevertheless, for ease of comparison to the petition, the Court's Order proceeds as if there are fourteen alleged grounds for relief.

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to do so. For the reasons set forth below, the Court agrees with the State's contention that Petitioner has procedurally defaulted all of his claims.

A Court shall not grant an application for a writ of habeas corpus without a petitioner first proving he has "exhausted the remedies available in the court of the State." 28 U.S.C. § 2254(b)(1)(A). The principles of comity, federalism, and judicial efficiency drive this requirement; it "provides the State 'an opportunity to pass upon and correct alleged violations of its prisoners' federal rights.'" *Bolton v. Akpore*, 730 F.3d 685, 694 (7th Cir. 2013) (quoting *Duncan v. Henry*, 513 U.S. 364, 365 (1995) (*per curiam*)). A prisoner may satisfy the exhaustion requirement by asserting his federal claim through at least one complete round of state court review (*i.e.*, direct appeal or post-conviction review). *Id.* (citing *Pole v. Randolph*, 570 F.3d 922, 934 (7th Cir. 2009)). Unsurprisingly, while giving the state an opportunity to review his claims, a prisoner must comply with that state's procedures. If the claims are "not presented in the right court, in the right way, and at the right time—as state rules define those courts, ways, and times[,]" the state court is entitled to reject those claims as procedurally barred. *Szabo v. Walls*, 313 F.3d 392, 395 (7th Cir. 2002).

Where a prisoner has already pursued relief in state court to no avail, however, the doctrine of procedural default often "will preclude a federal court from reaching the merits of a habeas claim." *Perruquet v. Briley*, 390 F.3d 505, 514 (7th Cir. 2004). Such preclusion will happen when: "(1) that claim was presented to the state courts and the state-court ruling against the petitioner rests on adequate and independent state-law grounds, or (2) the claim was not presented to the state courts and it is clear that those courts would now hold the claim procedurally barred." *Id.* (citing *Coleman v. Thompson*, 501 U.S. 722, 735 & n. 1 (1991)). If a prisoner has procedurally defaulted his claim, a court will only reach the merits if: (1) he makes the burdensome showing of cause and prejudice; or (2) he demonstrates a miscarriage of justice would occur if the court did not reach the merits." *Id.*

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(citing *Wainwright v. Sykes*, 433 U.S. 72, 87–88 (1977); *Murray v. Carrier*, 477 U.S. 478, 495–96 (1986)).

As the State correctly notes, Petitioner's claims before this Court fall into two groups: (1) those based on the trial record;[4] and (2) those included in Petitioner's state post-conviction petition.[5] The Court finds the claims in each group have been defaulted and addresses each in turn.

Claims Based on the Trial Record

Petitioner's claims based on the trial record are all procedurally defaulted. The only claim he presented on direct appeal was that challenging the Georgia conviction. Accordingly, all others were forfeited.[6] Moreover, the trial court at the state post-conviction level expressly held Petitioner's claims based on the trial record were procedurally barred.

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[4] The Court, to the best of its ability, has determined the following grounds from Petitioner's petition fall into the trial record group: (1) Ground One: Violation of Due Process Due to Altered Transcripts; (2) Ground Two: Due Process Violations by Court Clerk (Circuit Court) for Submitting Incomplete Appeal Record, Withholding Grand Jury Transcript, Officers' Report, etc.; (3) Ground Three: McClean County Court Clerk Violated Due Process by Refusing to Honor Subpoenas and Withheld Fruit of Subpoena Pre-Trial; (4) Ground Four: Trial Court Denied Motion to Have Forensic Analysis Done on the DVDs to Prove They Were Substantially Altered; (5) Ground Six: Denial of Sixth Amendment Right to a Speedy Trial on Companion Case; (6) Ground Seven: Involves the Use of Fabricated/Manufactured Evidence; (7) Ground Eight: State's Attorneys withholding of Vital, Relevant, and Discoverable, Exculpatory Evidence; (8) Ground Nine: Involves the Willful Use of Perjured Testimony to Convict Petitioner; (9) Ground Ten: violation of due process via a Conspiracy to Deprive Petitioner of a True and Complete Video Recording of the Events Leading Up to His Arrest; (10) Ground Eleven: Petitioner's Sixth Amendment Right to a Speedy Trial was Systematically Taken by Fraud by all Concerned with the McLean County Court; (11) Ground Twelve: violation of due process and Sixth Amendment right to Cross Examine the Witnesses Against Him by the Trial Court; (12) Ground Thirteen: Petitioner has been Denied Any Opportunity to Secure, Submit Copies of the Missing, Intentionally Omitted Documents; and (13) Ground Fourteen: due process violations against Petitioner by the Trial Court Judge.

[5] The Court has not found in the present petition a specific post-conviction claim. To the extent Petitioner is arguing post-conviction claims, however, the Court addresses why any such claims would be defaulted in this case.

[6] As the State points out, even assuming *arguendo* that Petitioner did not forfeit his other claims because he filed a supplemental appellate brief, his trial record claims are still defaulted. The trial court was well within its purview to reject Petitioner's brief, *see People v. McDonald*, 168 Ill.2d 420, 435 (1995) ("[A] defendant has no right to both self-representation and the assistance of counsel."), providing an adequate and independent state ground for their rejection. In addition, Petitioner did not present these claims to the Illinois Supreme Court in his petition for leave to appeal.

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ECF No. 22-15 at 8–9. Denying the petition based on *res judicata* and waiver provided adequate and independent state grounds for dismissal. *Sturgeon v. Chandler*, 552 F.3d 604, 611 (7th Cir. 2009) ("A finding of waiver by the state postconviction court is enough to establish an adequate and independent state ground.") (citing *Daniels v. Knight*, 473 F.3d 426, 431 (7th Cir. 2007)). Accordingly, the Court finds those claims are procedurally defaulted in the present petition.

Claims Included in Petitioner's State Post-Conviction Petition

The State points out it is conceivable that Petitioner may allege he did not discover certain issues in time to raise them on direct appeal (*e.g.*, claims regarding falsified transcripts or withheld evidence). ECF No. 21 at 13. Indeed, Petitioner appears to argue as much in his traverse. *See* ECF No. 23 at 7 (arguing he could not raise issue of trial transcript inaccuracies "due to their tardy arrival"). Accordingly, the Court proceeds as if that were the case and still finds any such claims would have been procedurally defaulted in the present petition. Petitioner has procedurally defaulted any state post-conviction claims because the denial of his state post-conviction petition rested on "adequate and independent state-law grounds." *Perruquet*, 390 F.3d at 514. Specifically, the appellate court noted Petitioner did not comply with Illinois Supreme Court Rule 341(h) and dismissed his appeal for that reason. *People v. Hamilton*, 2016 IL App (4th) 150535-U (Mar. 4, 2016), at 2–3. That reasoning was adequate because it "rest[ed] upon firmly established and regularly followed state practice."[7] *Franklin v. Gilmore*, 188 F.3d 877, 882 (7th Cir. 1999). It is independent because the application of the state procedural rule did not depend on federal law. Accordingly, because there was an adequate and independent state law

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[7] It is true the court *could* have excused Petitioner's noncompliance with Rule 341(h), but due to the volume of the petition and lack of citation to the record, it followed state practice by dismissing the petition for noncompliance. *See supra*, pages 3–4.

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ground for denying the petition, the Court finds Petitioner's post-conviction are procedurally defaulted.

Cause and Prejudice or Miscarriage of Justice

Petitioner's default cannot be excused. As stated *supra*, pages 5–6, procedural default may only be excused if a state prisoner demonstrates cause and prejudice or that a failure to reach the merits of the claim would result in a fundamental miscarriage of justice. Petitioner here can demonstrate neither.

Petitioner shows no cause for defaulting his claims which the state courts found procedurally barred (*i.e.*, his claims based on the trial record). He could have raised his claims on direct appeal but declined to do so. Petitioner argues his appellate counsel was ineffective, *see, e.g.*, ECF No. 1 at 5, 7, which could show cause for his default. *Edwards v. Carpenter*, 529 U.S. 446, 451–52 (2000). Such a claim can only serve as cause, however, if it was first presented to the state courts. *Id.* To Petitioner's credit, he did argue ineffective assistance of appellate counsel in his state post-conviction petition, but the specific examples he argues constituted ineffective assistance were limited to counsel's failure "to attack the use of (A) the 'Second Prior' from Alabama . . . (B) the 'First Prior' . . . from Florida . . . [and] (C) the 'Third Prior.'" ECF No. 22-13 at 2–3.[8] Any issues which he failed to identify to the state courts as bases for an ineffective assistance claim (*e.g.*, his claims based on the trial record) cannot now constitute cause for his failure to raise them on direct appeal. *Stevens v. McBride*, 489 F.3d 883, 894 (7th Cir. 2007) ("[F]ailure to alert the state court to a complaint about one aspect of counsel's assistance will lead to a procedural default" of that issue). The Court thus finds Petitioner cannot show cause for defaulting his claims based on the trial record.

[8] The "Third Prior" to which he refers is the Georgia conviction for which Petitioner ultimately had his sentence reduced by three years.

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Similarly, Petitioner cannot show cause for defaulting his claims contained in his state post-conviction petition. Those claims are defaulted because their dismissal by the state court rested on an adequate and independent state ground, namely the lack of compliance with Illinois Supreme Court Rule 341(h). Petitioner presents to this Court no legitimate reason for his lack of compliance,[9] and, therefore, the Court finds he had no cause for his default of his claims contained in his state post-conviction petition. Because Petitioner has not demonstrated cause for defaulting any of his claims, the Court need not address whether his default prejudiced him.

Nor can Petitioner demonstrate that this Court not reaching the merits of his Petition would result in a fundamental miscarriage of justice. To prevail, Petitioner must "make a credible claim, supported by new, reliable evidence of his innocence" and "that 'in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.'" *Woods v. Schwartz*, 589 F.3d 368, 377 (7th Cir. 2009) (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995)). Here, the only "evidence" Petitioner submits (*e.g.*, allegations that DVDs and transcripts were altered) is that which already has been denied as a basis for relief by the state courts. It is neither new nor reliable. In any event, in light of statements Petitioner made during his closing arguments at trial, this Court finds a reasonable juror could have found him guilty beyond a reasonable doubt.[10]

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[9] In his traverse, Petitioner says he could not cite to the appellate record because he did not have it and that the Illinois Supreme Court twice denied his request for a supervisory order ordering the record be made available to him. ECF No. 23 at 7. He also discusses the volume of his state post-conviction petition and raises an argument as to how he could not comply with Illinois Supreme Court Rule 341(h). *Id.* at 7–9. Petitioner does not provide this Court with a copy of those denied requests. Even if he had, however, the Court's decision would not be different, as Petitioner does not adequately rebut all of the examples cited by the appellate court of Petitioner's lack of compliance with Rule 341(h).

[10] Specifically, Petitioner stated to the jury "I've never agreed with the law. I've smoked ganja since 1967. . . . I'm sorry to have to lose any part of my life to laws that I don't agree with. But I did come into your State with this stuff." *See People v. Hamilton*, 2015 IL App (4th) 130612-U (Feb. 17, 2015), at 1.

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Accordingly, because the Court finds Petitioner has procedurally defaulted all of his claims and that his default cannot be excused, the Court DENIES his Petition for Writ of Habeas Corpus.

CERTIFICATE OF APPEALABILITY

To obtain a certificate of appealability, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner must also show "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.* Here, the Court disposed of the case due to a "plain procedural bar," namely Petitioner's procedural default of all of his claims. Accordingly, the Court DENIES Petitioner a certificate of appealability.

CONCLUSION

For the reasons set forth above, the Court DENIES Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1). This matter is now terminated.

ENTERED this 23rd day of January, 2017.

/s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

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