

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

THADDEUS TAYLOR,
Petitioner,

v.

PRISONER
Case No. 3:02cv724(DJS) (TPS)

COMMISSIONER JOHN ARMSTRONG
WARDEN HECTOR RODRIGUEZ,
Respondents.

RULING AND ORDER

The petitioner, Thaddeus Taylor, is currently confined at the Cheshire Correctional Institution in Cheshire, Connecticut. He brings this action pro se for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his April 1997 state court conviction for assault of an employee of the Department of Correction. The respondents ask the court to dismiss this action because the petitioner has not exhausted his state court remedies with regard to any of the grounds for relief asserted in this petition. For the reasons set forth below, the respondents' motion to dismiss is granted in part and denied in part.

I. PROCEDURAL BACKGROUND

In February 1997, a jury in the Connecticut Superior Court for the Judicial District of New Haven found the petitioner guilty of three counts of assault of an employee of the Department of Correction in violation of Connecticut General Statutes § 53a-167c. On April 11, 1997, the court sentenced the petitioner to a total effective term of imprisonment of twelve years, suspended after six years and five years of probation. See State v. Taylor, 63 Conn. App. 386, 389, 776 A.2d 1154, 1160 (2001). The court concluded that this sentence was to run

consecutively, rather than concurrently, to the federal sentence the petitioner was already serving.

See id.

On direct appeal, the petitioner challenged his conviction on five grounds. See State v. Taylor, 63 Conn. App. 386, 388, 776 A.2d 1154, 1159 (2001). The petitioner argued that:

the trial court improperly (1) ordered, without first holding a hearing, that he be restrained with leg shackles throughout the proceedings, (2) accepted his waiver of his right to counsel without performing an adequate canvass, (3) failed to ensure that he had access to a law library prior to and during the proceedings, (4) denied his motion to dismiss the assault charges because the proceedings violated the Interstate Agreement on Detainers (IAD), General Statutes § 54-186 et seq., and (5) interpreted General Statutes (Rev. To 1995) § 53a-167c(b) as requiring the imposition of a consecutive sentence rather than a concurrent sentence for the assault conviction.

Id. On May 15, 2001, the Connecticut Appellate Court affirmed the conviction. See id. at 419, 776 A.2d at 1176. On May 23, 2001, counsel for the petitioner filed a petition for certification with the Connecticut Supreme Court. The following grounds were raised in the petition for certification:

Taylor asks this Court to review the Appellate Court's affirmance of his conviction despite an appellate claim that the trial court had improperly order[ed that] he be restrained with leg shackles, accepted his waiver of his right to counsel without a proper canvass, made a conditional waiver of counsel premised on adequate access to legal materials and failed to ensure that he had adequate access to legal materials through his standby counsel or in person in order to effectuate his right to represent himself and to present a defense.

Mem. Law Supp. Resp'ts' Mot. Dismiss, Ex. D.¹ On July 10, 2001, the Connecticut Supreme

¹ The court takes judicial notice of cases filed in this court and in state court as well as rulings, motions and pleadings filed in those cases. See Kramer v. Time Warner, Inc., 937 F.2d 767, 774 (2d Cir. 1991) (noting that "courts routinely take judicial notice of documents filed in

Court denied the petition for certification. See State v. Taylor, 257 Conn. 907, 777 A.2d 687 (2001). The petitioner then filed a petition for writ of certiorari to the United States Supreme Court. On October 15, 2001, the Supreme Court denied the petition. See Taylor v. Connecticut, 534 U.S. 978 (2001).

In June 2001, the petitioner filed a petition for writ of habeas corpus in the Connecticut Superior Court for the Judicial District of New Haven See Taylor v. Warden, CV-01-452868-S (Conn. Super. Ct. June 28, 2001). The petitioner raised five grounds in his amended petition filed on December 7, 2001, including a claim that he was prosecuted in violation of the state Interstate Agreement on Detainers (“IAD”) and a claim that his sentence violates Apprendi v. New Jersey, 530 U.S. 466 (2000). See Mem. Law Supp. Resp’ts’ Mot. Dismiss, Ex. O. On August 6, 2003, a superior court judge granted respondent’s motion for summary judgment as to the IAD claim. See id. at Ex. P. The other four grounds in the amended petition remain pending in state court.

On April 25, 2002, the petitioner filed a petition for writ of habeas corpus in this court. He claimed that his state court conviction and sentence were illegal because they violated the anti-shuttling provisions of Connecticut’s Interstate Agreement on Detainers. See Taylor v. Armstrong, Case no. 3:02cv724 (DJS). On August 27, 2003, the court granted the respondents’ motion to dismiss without prejudice to the petitioner re-filing a federal habeas petition after he exhausted his state court remedies. The petitioner filed the present petition on December 5, 2003,

other courts, again not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings. See, e.g., United States v. Walters, 510 F.2d 887, 890 n. 4 (3d Cir.1975) (on review of denial of habeas corpus, judicial notice of briefs and petitions filed in state courts to determine whether petitioner had exhausted his state remedies).")

the date he presumably handed the petition to prison officials for mailing to the court.

II. STANDARD OF REVIEW

A prerequisite to habeas corpus relief under 28 U.S.C. § 2254 is the exhaustion of all available state remedies. See O’Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Rose v. Lundy, 455 U.S. 509, 510 (1982); Daye v. Attorney General of the State of New York, 696 F.2d 186, 190 (2d Cir. 1982), cert. denied, 464 U.S. 1048 (1982); 28 U.S.C. § 2254(b)(1)(A). The exhaustion requirement is not jurisdictional; rather, it is a matter of federal-state comity. See Wilwording v. Swenson, 404 U.S. 249, 250 (1971) (per curiam). The exhaustion doctrine is designed not to frustrate relief in the federal courts, but rather to give the state court an opportunity to correct any errors which may have crept into the state criminal process. See id. “Because the exhaustion doctrine is designed to give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts, ... state prisoners 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.” See O’Sullivan, 526 U.S. at 845.

The Second Circuit requires the district court to conduct a two-part inquiry. First, the petitioner must have raised before an appropriate state court any claim that he asserts in a federal habeas petition. Second, he must have “utilized all available mechanisms to secure appellate review of the denial of that claim.” Lloyd v. Walker, 771 F. Supp. 570, 573 (E.D.N.Y. 1991) (citing Wilson v. Harris, 595 F.2d 101, 102 (2d Cir. 1979)). “To fulfill the exhaustion requirement, a petitioner must have presented the substance of his federal claims to the highest court of the pertinent state.” Bossett v. Walker, 41 F.3d 825, 828 (2d Cir. 1994), cert. denied, 514 U.S. 1054 (1995) (internal citations and quotation marks omitted). See also Pesina v.

Johnson, 913 F.2d 53, 54 (2d Cir. 1990) (“[T]he exhaustion requirement mandates that federal claims be presented to the highest court of the pertinent state before a federal court may consider the petition.”); Grey v. Hoke, 933 F.2d 117, 119 (2d Cir. 1991) (same).

III. DISCUSSION

The petitioner raises four grounds in his petition. He argues that (1) his state court conviction and sentence should be dismissed because it violates the anti-shuttling provisions of Connecticut’s IAD; (2) the trial court’s requirement that he be shackled in front of the jury was unjustified and denied him a right to a fair trial; (3) the trial court’s denial of his access to an adequate law library and legal materials to enable him to prepare for his defense violated his right to a fair trial and due process; and (4) his sentence and Connecticut General Statutes 53a-167c are unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). The respondent has moved to dismiss this action on the ground that the petitioner has not exhausted his state court remedies with regard to any of the four claims asserted in the petition.

A. Violation of IAD

The respondents contend that the petitioner has not exhausted all of his available remedies as to his claim that his sentence violates the anti-shuttling provisions of the IAD. On direct appeal of his conviction to the Connecticut Appellate Court, the petitioner raised the IAD claim. He did not, however, raise this claim in the petition for certification to the Connecticut Supreme Court. Instead, in October 2003, he filed a petition for writ of mandamus with the Connecticut Supreme Court pursuant to Section 23-45 of the Connecticut Practice Book. In the writ of mandamus he asked the Connecticut Supreme Court to order the Superior Court to dismiss or vacate his sentence because it violates the IAD. The Connecticut Supreme Court dismissed the writ on November 20, 2003. The petitioner also raised this issue in his state

habeas petition, Taylor v. Warden, CV-01-452868-S (Conn. Super. Ct. June 28, 2001). On August 6, 2003, a superior court judge granted respondent's motion for summary judgment as to the IAD claim in the amended petition. The petitioner did not appeal the court's ruling. The other claims in the amended state petition remain pending.

In order to properly to satisfy the exhaustion requirement, a habeas petitioner must have presented the federal constitutional claims asserted in his petition to the appropriate state court, and must have "utilized all available mechanisms to secure [state] appellate review of the denial" of those claims. Klein v. Harris, 667 F.2d 274, 282 (2d Cir.1981) (citing 28 U.S.C. s 2254(c)). Section 2254(c) provides "(a)n applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

Here, the petitioner has not yet appealed the decision on the IAD claim set forth in his amended state habeas petition. In addition, the petitioner has provided no authority for his contention that a writ of mandamus to the Connecticut Supreme Court is an adequate substitute for an appeal of a decision in a state habeas petition. Accordingly, the court concludes that the petitioner has failed to exhaust all of his available state court remedies as to the IAD claim. The motion to dismiss is granted as to this claim.

B. Denial of Fair Trial Due to Shackling in Front of Jury

The respondents argue that the petitioner's claim that the trial court denied him his right to a fair trial by requiring him to wear shackles during the trial was not raised before the Connecticut Supreme Court on direct appeal. On appeal to the Connecticut Appellate Court, the petitioner argued that the requirement that he be shackled during trial denied him his right to self-representation and his right to a fair trial. See Mem. Law Supp. Resp'ts' Mot. Dismiss, Ex. B.

The respondents contend that in his petition for certification to the Connecticut Supreme Court the petitioner only argued that the shackling requirement denied him his right to self-representation. The respondents claim that the petitioner did not make a separate argument that the shackling requirement denied him his right to a fair trial.

To satisfy the exhaustion requirement under 28 U.S.C. 2254(b), the petitioner must have “fairly presented” his claim of denial of a right to a fair trial to the Connecticut Superior, Appellate and Supreme Courts in order to satisfy the exhaustion requirement. The petitioner must have “informed [the] court[s] about both the factual and legal bases for the federal claim.” Ramirez v. Attorney General of New York, 280 F.3d 87, 94 (2d Cir. 2001) (citations omitted). It is not necessary to cite to a specific federal constitutional provision to preserve an issue for review. “Reliance on pertinent federal cases employing constitutional analysis . . . [or] assertion of a claim in terms so particular as to call to mind a specific right protected by the Constitution” is sufficient to alert a state court to the federal constitutional nature of the issue. Daye, 696 F.2d at 194.

In the petition for certification, the petitioner asked the Connecticut Supreme Court to review the Connecticut Appellate Court’s holding that it was not improper for the trial court to order the petitioner to remain in leg shackles during his trial. See Mem. Law Supp. Resp’ts’ Mot. Dismiss, Ex. D. The petitioner included factual findings that the Connecticut Appellate Court’s relied upon to reach its decision regarding the shackling requirement. These findings are all part of the Appellate Court’s discussion on the petitioner’s claim that the shackling requirement denied him his right to a fair trial. See State v. Taylor, 63 Conn. App. 386, 396-97, 776 A.2d 1154, 1163-64 (2001). In the discussion of this claim, the petitioner argued that a trial court must balance its duty to maintain security and order during trial with the defendant’s right

to a fair trial and to proceed *pro se*. The petitioner cited Estelle v. Williams, 425 U.S. 501, 503-04 (1976) in support of his claim that the order requiring him to wear shackles during trial violated his right to a fair trial. Estelle addressed a defendant's claim that the trial court violated his Fourteenth Amendment right to fair trial by requiring him to appear in court in prison attire. Id. at 503-04. The court concludes that the petitioner adequately informed the Connecticut Supreme Court that he sought review of his claim that the trial court's order requiring him to appear at trial in shackles violated his right to a fair trial. Thus, the petitioner has exhausted his state court remedies as to this claim and the motion to dismiss is denied.

C. Denial of Access to Legal Materials and Law Library

The petitioner argues that the trial court's failure to ensure the he had access to a law library and legal materials prevented him from adequately presenting his defense and deprived him of his right to a fair trial and to Due Process. The respondent argues that the petitioner has failed to exhaust this claim.

On direct appeal to the Connecticut Appellate and Supreme Courts, the petitioner argued that the trial court's failure to ensure that he had access to a law library to prepare for his defense violated his right to self-representation. See Mem. Law Supp. Resp'ts' Mot. Dismiss, Ex. D. Petitioner claimed that his waiver of the right to counsel was conditioned upon standby counsel providing adequate access to legal materials and that his waiver was invalid because standby counsel did not in fact provide adequate access to legal materials. Petitioner also argued that, if the court found that his waiver was valid, then the court should find that his right of access to legal materials was impaired because he did not have access to legal materials during his trial independent of standby counsel. This alternate position is sufficient to place petitioner's claim before the Connecticut Appellate and Supreme Courts. Therefore, petitioner has exhausted his

remedies with respect to his claim of denial of access to legal materials.

D. Unconstitutionality of Connecticut General Statutes 53a-167c and Illegality of Sentence under *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

On April 11, 1997, a Superior Court Judge sentenced the petitioner to a total effective term of imprisonment of twelve years, suspended after six years and five years of probation. See Taylor, 63 Conn. App. at 389, 776 A.2d at 1160. This sentence was to be served consecutively to the petitioner's federal sentence. See id. On direct appeal to the Connecticut Appellate Court the petitioner argued that at his sentencing hearing in state court, the judge improperly determined that Connecticut General Statutes 53a-167c(b) did not permit him to impose a sentence to be served concurrently to the petitioner's federal sentence. The petitioner did not raise that claim in his petition for certification to the Connecticut Supreme Court.

The claim he raises in the present petition differs from the claim raised on appeal to the Connecticut Appellate Court. The petitioner now claims that his sentence is illegal because the statute under which he was sentenced, Connecticut General Statutes 53a-167c(b), is unconstitutional in view of the United States Supreme Court's decision in Apprendi. The petitioner did not raise this claim in his petition for certification to the Connecticut Supreme Court. Documents filed with the Connecticut Supreme Court in connection with the petitioner's appeal reflect that the petitioner attempted to file a motion to file a limited appearance and to file a brief raising new issues not raised in the petition for certification. (See Mem. Law Supp. Resp.ts' Mot. Dismiss, Exs. D-G.) The Second Circuit has held that "a supplemental brief, when properly submitted to the state court, puts that court on notice of constitutional claims addressed in that brief." Reid v. Senkowski, 961 F.2d 374, 376 (2d Cir. 1992) (citing Abdurrahman v. Henderson, 897 F.2d 71, 73 (2d Cir. 1990)). In Reid, the petitioner was represented by an

attorney and state appellate court permitted him to file a pro se supplemental brief raising a new claim not raised by his attorney. See id. at 376-77. In this case however, the Connecticut Supreme Court denied the petitioner's motions for permission to appear pro se and to file a supplemental brief.² (See Mem. Law Supp. Resp.ts' Mot. Dismiss, Exs. D-G.) Thus, the supplemental brief was not properly presented to the Connecticut Supreme Court.³ Because the petition for certification did not include the claim raised in this petition and the Connecticut Supreme Court did not permit the petitioner to appear pro se and file a supplemental brief including the claim, the court concludes that the petitioner has not exhausted his state court remedies as to this claim. The motion to dismiss is granted on this ground.

E. Status of Petition

As discussed herein, petitioner has presented both exhausted claims and unexhausted claims. The United States Court of Appeals for the Second Circuit has cautioned the district courts not to dismiss a mixed petition containing exhausted and unexhausted claims where an outright dismissal would preclude the petitioner from having all of his claims addressed by the

² The Connecticut Supreme Court has held that "a defendant does not have a right to hybrid representation under either the Connecticut or the United States constitution." State v. Frye, 224 Conn. 253, 256, 617 A.2d 1382 (1992) (citing State v. Gethers, 197 Conn. 369, 383, 497 A.2d 408 (1985)). Whether or not to permit a defendants to appear pro se together with an attorney is wholly within the court's discretion.

³ The petitioner also filed a petition for writ of mandamus in this court seeking an order compelling the Connecticut Appellate and Connecticut Superior Courts to immediately dismiss with prejudice the warrants, informations and indictments in connection with his conviction on assault charges in April 1997. (See Taylor v. Appellate Court, Case no. 3:00cv890 (DJS) (D. Conn. May 16, 2000). In November 2000, this court denied the writ of mandamus and in February 2001, the United States Court of Appeals for the Second Circuit dismissed the petitioner's appeal of the denial. The petitioner also apparently submitted a copy of the petition for writ of mandamus he filed here to the Connecticut Supreme Court. He does not provide any evidence that he filed an original petition for writ of mandamus with the Connecticut Supreme Court.

federal court. The Second Circuit advised the district court to stay the petition to permit the petitioner to complete the exhaustion process and return to federal court. See Zarvela v. Artuz, 254 F.3d 374, 380-83 (2d Cir. 2001) (recommending that the district court stay exhausted claims and dismiss unexhausted claims with direction to timely complete the exhaustion process and return to federal court “where an outright dismissal ‘could jeopardize the timeliness of a collateral attack.’”). The court finds that staying proceedings relating to petitioner’s exhausted claims is appropriate under these circumstances.

IV. CONCLUSION

The respondents’ Motion to Dismiss [**doc. #14**] is **GRANTED** as to claims one and four and **DENIED** as to claims two and three. Claims one and four are **DISMISSED** without prejudice to the petitioner amending his current petition after he exhausts his state court remedies. Proceedings related to claims two and three are **STAYED** pending petitioner’s timely completion of the exhaustion process or for good cause by request of either party.

SO ORDERED this 28th day of February, 2005, at Hartford, Connecticut.

/s/DJS

Dominic J. Squatrito
United States District Judge