UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL ANCONA,	:	
Petitioner,	:	
v.	:	Case No. 3:05 CV 363 (MRK)
TERESA LANTZ,	:	
Respondent.	:	

RULING AND ORDER

Pending before the Court is Petitioner Michael Ancona's Motion for Bail Pending Consideration of Petition for Writ of Habeas Corpus [**doc. #4**]. Having considered the briefs submitted by the parties[1] and having heard argument from the parties twice, on March 10, 2005 and April 7, 2005, the Court DENIES Mr. Ancona's Motion for Bail [doc. # 4].

I.

The facts of this case are laid out in detail in the decision of the Connecticut Supreme Court in *State v. Ancona*, 270 Conn. 568 (2004), and the Court will not repeat those facts here. Suffice it to say that after being convicted by a jury of fabricating physical evidence, conspiring to fabricate evidence, and falsely reporting an incident, Mr. Ancona – a former police officer – was sentenced by the Connecticut Superior Court on January 14, 2000 to serve a total sentence of five years incarceration, with execution of the sentence suspended after six months and four years

[1] The Court considered the following pleadings filed by the parties: Petitioner's Motion and Memorandum for Bail Pending Consideration of Petition for Writ of Habeas Corpus [doc. #4] ("Pet.'s Mem."); Petitioner's Supplemental Memorandum for Bail Pending Consideration of Petition for Writ of Habeas Corpus [doc. #9] ("Pet.'s Supp. Mem."); and Respondent's Objection to Petitioner's Motion for Bail Pending Consideration of Petition for a Writ of Habeas Corpus [doc. #13] ("Resp.'s Objection").

of conditional discharge. *See* Petition [doc. #1] at 2. Mr. Ancona was released on a $5,000 surety bond and appealed his conviction to the Connecticut Appellate Court, arguing that improper remarks by the prosecutor during closing arguments denied Mr. Ancona his federal and state due process right to a fair trial. The Appellate Court agreed, unanimously reversing Mr. Ancona's conviction and remanding for a new trial. *See State v. Ancona*, 69 Conn. App. 29 (2002).

Mr. Ancona's success on appeal was short-lived, however. The Connecticut Supreme Court granted the State's petition for certification, and after briefing and argument, the Supreme Court – in a 50-page decision authored by Justice Richard Palmer – unanimously reversed the Appellate Court and affirmed Mr. Ancona's conviction. *See Ancona*, 270 Conn. at 618. Although the Connecticut Supreme Court rightly condemned many of the prosecutor's remarks as improper, the court nonetheless recognized that it "is not enough that the prosecutors' remarks were undesirable or even universally condemned." *Darden v. Wainwright*, 477 U.S. 168, 181 (1986). The Connecticut Supreme Court upheld Mr. Ancona's conviction because it found that while undoubtedly improper, the prosecutor's improprieties had not "so infected the trial with unfairness as to make [Mr. Ancona's] conviction a denial of due process." *Ancona*, 270 Conn. at 612 (internal quotations omitted).

Thereafter, Mr. Ancona sought a writ of certiorari from the United States Supreme Court, which denied his certiorari petition on January 10, 2005. *See Ancona v. Connecticut*, 125 S. Ct. 921 (2005). On February 28, 2005, Mr. Ancona filed in this Court a Petition for a Writ of Habeas Corpus [doc. #1] under 28 U.S.C. § 2254. Mr. Ancona's attorneys have informed the Court that Mr. Ancona is due to surrender for service of his sentence on April 15, 2005. *See*

Order [doc. #6] at 1. Mr. Ancona now asks the Court to order his release on bail pending the Court's decision on the merits of his habeas petition. *See* Petition [doc. #1].

As both parties agree, this Court has inherent authority to grant bail to a state prisoner pending full review of his habeas corpus petition in federal court. *See Ostrer v. United States*, 584 F.2d 594, 596 n.1 (2d Cir. 1978). However, the Court may do so only if the "petitioner [can] demonstrate that the habeas petition raise[s] substantial claims and that extraordinary circumstances exist[ ] that make the grant of bail necessary to make the habeas remedy effective." *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (quotation marks and citations omitted). "[T]he standard for bail pending habeas litigation is a difficult one to meet." *Id*. The Second Circuit has emphasized that "the authority of the federal courts to grant bail to habeas petitioners . . . is limited" and is to be exercised only in "unusual" or "special" cases. *Id.* (emphasis added). This is because, as Judge Peter C. Dorsey of this District explained in *Rado v. Meachum*, 699 F. Supp. 25 (D. Conn. 1988), "the state has a significant interest in bringing some degree of finality to its criminal prosecutions . . . Thus the federal court should tread lightly before interfering with the state's substantial interest in executing its judgment." *Id*. at 26 (also noting that "principles of comity and federalism counsel that this power be exercised sparingly"). *See also Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985) ("[T]he interest in the finality of criminal proceedings is poorly served by deferring execution of sentence till long after the defendant has been convicted.").

For the reasons stated below, the Court concludes that this is not an "unusual" or "special" case and that Mr. Ancona has not sustained his burden on either prong of the two-part inquiry this Court must undertake.

II.

In order determine whether Mr. Ancona's petition raises a "substantial claim," the Court must consider whether Mr. Ancona has "a substantial likelihood . . . of succeeding on the merits of his" petition. *Mapp*, 241 F.2d at 230 n.13 (substantial claim raised where petitioner challenged a deportation order "the propriety of which is clearly open to question"); *Evangelista v. Ashcroft*, 204 F. Supp. 2d 405, 407 (E.D.N.Y. 2002) ("A substantial claim for relief is found where a petitioner relies on clear case law establishing the likelihood of success on his claim."). Mr. Ancona likens this inquiry to the standard for bail pending appeal under the Bail Reform Act, 18 U.S.C. § 3143(b), which requires the Court to find that the appeal "raises a substantial question of law or fact likely to result" in "reversal or in a new trial." *United States v. Tunick*, No. S3 98 CR 1238(SAS), 2001 WL 282698, at *1 (S.D.N.Y. Mar. 22, 2001). *See also United States v. Randell*, 761 F.2d 122, 125 (2d Cir. 1985) ("substantial question" under § 3143(b) is "a 'close' question or one that very well could be decided the other way") (citing with approval *United States v. Giancola*, 754 F.2d 898, 908 (11th Cir. 1985)) .

In assessing whether Mr. Ancona's petition satisfies this standard, it is important to clarify at the outset – as the parties themselves have agreed – that the relevant question is *not* whether Mr. Ancona raised in state court a substantial claim or close question on whether the prosecutor's closing argument deprived Mr. Ancona of a fair trial. Rather, the question for this Court at this stage is whether Mr. Ancona is likely to succeed on his claim that the Connecticut Supreme 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." *Yarborough v. Alvarado*, 124 S. Ct. 2140, 2144 (2004) (reciting the standard governing "when a federal court can grant an

application for a writ of habeas corpus on behalf of a person held pursuant to a state court judgment" under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254(d)(1)); *Benn v. Greiner*, No. 04-0527PR, --- F.3d ---, 2005 WL 545025, at *3 (2d Cir. Mar. 9, 2005) (same). While that inquiry certainly requires the Court to consider the merits of the due process claim Mr. Ancona raised in state court, ultimately, it is the reasonableness of the Connecticut Supreme Court's assessment of that claim, and not simply its merits, that must present a substantial or close question.

Though the Court emphasizes that it has not prejudged whether Mr. Ancona will ultimately prevail on his habeas corpus petition after the Court has fully considered all of the information, arguments and evidence that Mr. Ancona may present, at this preliminary stage,[2] the Court is not satisfied that he has demonstrated a substantial likelihood of prevailing on his claim that the Connecticut Supreme Court unreasonably applied federal law.

A.

Under AEDPA, a federal habeas court may not grant a writ of habeas corpus unless the Court is convinced that 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." 28 U.S.C. § 2254(d). Mr. Ancona does not seriously assert that the Connecticut Supreme Court's decision was directly contrary to federal law. Instead, Mr. Ancona's petition is founded on his claim that the Connecticut Supreme Court unreasonably applied clearly

---

[2] Along with his brief, Mr. Ancona submitted a compact disc containing the transcript of his trial. Although the Court has not been able to review the entire transcript before ruling on Mr. Ancona's bail motion, it has reviewed in detail the closing arguments of both the prosecutor and defense counsel as well as the trial judge's charge to the jury.

established federal law in affirming his conviction. *See* Resp.'s Objection at 5.

In three recent cases, the Supreme Court has provided guidance to lower courts on how to analyze claims under the "unreasonable application" prong of the highly deferential AEDPA inquiry. First, in *Williams v. Taylor*, 529 U.S. 362 (2000), the Supreme Court instructed that "a federal habeas court making the 'unreasonable application' inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable." *Id.* at 410. The Court cautioned that "an *unreasonable* application of federal law is different from an *incorrect* application of federal law," and that a federal habeas court may not issue the writ unless it is convinced the state's court's ruling was objectively unreasonable. *Id.* at 410-11 (emphasis in original).

Two years later, in *Yarborough v. Alvarado*, *supra*, the Supreme Court added that in assessing the reasonableness of a state-court adjudication, the range of reasonable judgment can depend on the nature of the rule at issue. According to the Court:

> If a legal rule is specific, the range may be narrow. Applications of the rule may be plainly correct or incorrect. Other rules are more general, and their meaning must emerge in application over the course of time. Applying a general standard to a specific case can demand a substantial element of judgment.

Id. at 2149. As a consequence, the Court emphasized that "evaluating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case by case determinations." *Id.* (finding "reasonable" state court conclusions about which "it can be said that fair-minded jurists could disagree").

Finally, within the last month, the Supreme Court in *Brown v. Payton*, --- S.Ct. ---, 2005

WL 645182 (Mar. 22, 2005), reiterated its holding in *Williams*, stating that "[a] state-court decision involves an unreasonable application of this Court's clearly established precedents if the state court applies this Court's precedent's to the facts in an objectively unreasonable manner." *Id*. at *7. Even though the Supreme Court in *Brown* was willing to assume that the state court had applied established federal law "erroneously or incorrectly," the Court concluded that the writ should be denied because the state court's application of Supreme Court precedents was not "objectively unreasonable," as *Williams* requires.

With these principles in mind, the Court will consider whether the Connecticut Supreme Court rendered a decision that was objectively unreasonable when it held that the prosecutor's remarks during Mr. Ancona's trial, while clearly improper, did not "compromise[] [Mr. Ancona]'s right to a fair trial." *Ancona*, 270 Conn. at 618.

B.

As both parties agree, the controlling Supreme Court precedent on prosecutorial misconduct at trial is found in Justice Powell's decision for the Court in *Darden v. Wainwright*, *supra*, and the law on this issue was clearly established at the time of the Connecticut Supreme Court's decision. *See Jenkins v. Artuz*, 294 F.3d 284, 292 (2d Cir. 2002). In *Darden*, the Supreme Court refused to set aside the petitioner's capital conviction despite the fact that the prosecutor referred to him in closing argument as an "animal" and stated "I wish [the victim] had had a shotgun in his hand when he walked to the back door and had blown [Darden's] face off. I wish that I could see him sitting here with no face, blown away by a shotgun." *Darden*, 477 U.S. at 179, 180 n.12. Explaining its decision, the Supreme Court stated that in order to render a trial unfair, "[it] is not enough that the prosecutors' remarks were undesirable or even universally

condemned. The relevant question is whether the prosecutors' comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id*. at 181 (internal quotation marks and citations omitted). As Mr. Ancona concedes in his supplemental memorandum, *Darden* sets forth a general standard, thereby affording state courts "more leeway" in reaching outcomes in case by case determinations. *Yarborough*, 124 S. Ct. at 2149; Pet.'s Supp. Mem. at 6 n.1. *See also Ewing v. California*, 538 U.S. 11, 34 n.2 (2003) (noting that a courts are "faced with imprecise commands [and] must make difficult decisions" when asked to assess "whether prosecutorial misconduct deprived [a] defendant of a fair trial").

It is undisputed that the Connecticut Supreme Court correctly identified *Darden* as providing the governing legal principle. Thus, the Connecticut Supreme Court stated that the issue on appeal was "whether the identified improprieties . . . 'so infected the trial with unfairness as to make the [defendant's] conviction a denial of due process.' " *Ancona*, 270 Conn. at 611-12 (quoting, indirectly, *Darden*, 477 U.S. at 181). The court then proceeded to employ a six-factor analysis that the court had adopted in *State v. Williams*, 204 Conn. 523, 540 (1987). *See Ancona*, 270 Conn. at 611-12. The court first identified which, if any, of the prosecutor's remarks were improper, and then weighed in great detail: "(1) the extent to which the misconduct was invited by defense conduct or argument; (2) the frequency and severity of the misconduct; (3) the centrality of the misconduct to the critical issues in the case; (4) the strength of any curative measures taken; (5) the strength of the state's case; and (6) whether the defendant objected to the misconduct." *Id.*[3]

---

[3] Mr. Ancona understandably places great reliance on the Appellate Court's decision, but that decision was largely devoted to an analysis of the propriety of the prosecutor's remarks and

The Connecticut Supreme Court's test is, for all intents and purposes, identical to the Second Circuit's prosecutorial misconduct analysis. *See United States v. Elias*, 285 F.3d 183, 190 (2d Cir. 2002) ("In assessing whether prosecutorial misconduct caused 'substantial prejudice,' this Court has adopted a three-part test: the severity of the misconduct, the measures adopted to cure the misconduct, and the certainty of conviction absent the misconduct."); *United States v. Coriaty*, 300 F.3d 244, 255 (2d Cir. 2002) (taking into account defendant's failure to object to prosecutor's improper remarks at trial); *United States v. Tocco*, 135 F.3d 116, 130 (2d Cir. 1998) ("Under the invited or fair response doctrine, the defense summation may open the door to an otherwise inadmissible prosecution rebuttal."). Thus, Mr. Ancona wisely does not take issue with the method of analysis employed by the Connecticut Supreme Court.

Instead, Mr. Ancona argues that the conclusions reached by the Connecticut Supreme Court in applying the *Williams* factors to the facts of Mr. Ancona's case "involved an unreasonable application of" clearly established federal law. In particular, Mr. Ancona identifies three aspects of the Connecticut Supreme Court's analysis that he claims were unreasonable. First, Mr. Ancona appears to take issue with the Connecticut Supreme Court's statement that "the state's case against the defendant on [the charges of fabricating evidence, conspiring to fabricate evidence, and falsely reporting an incident] was very strong, if not overwhelming." *Ancona*, 270 Conn. at 617; Pet.'s Supp. Mem. at 20-22. However, at this admittedly preliminary stage, this Court believes that the Connecticut Supreme Court's thorough assessment of the evidence

---

dealt with the due process issue in a single, conclusory paragraph. *See Ancona*, 69 Conn. App. at 40-41. By contrast, the Connecticut Supreme Court's analysis of the unfairness and due process issues was detailed and thorough. *See Ancona*, 270 Conn. at 611-18.

adduced at Mr. Ancona's trial was entirely reasonable. The Court finds it notable that the Connecticut Supreme Court based its decision largely on Mr. Ancona's own admission that his report did not accurately reflect many aspects of his encounter with the individual whom Mr. Ancona was accused of assaulting, an encounter that was largely captured on a videotape that was played for the jury. *See Ancona*, 270 Conn. at 617. While, as Mr. Ancona argues, he may well have provided logical explanations for each of the inconsistencies in his report, neither the jury – nor for that matter, the Connecticut Supreme Court – was obliged to accept Mr. Ancona's explanations for these discrepancies.

Second, Mr. Ancona asserts that the Connecticut Supreme Court unreasonably "minimized" both the frequency and the severity of the prosecutor's misconduct. Pet.'s Supp. Mem. at 25-27. Having carefully reviewed both the closing argument and the Connecticut Supreme Court's decision, the Court disagrees with Mr. Ancona. To begin with, there is no set number of inappropriate remarks required to make a prosecutor's misconduct actionable. While the Second Circuit has acknowledged that there "no one-free-bite rule for prosecutors," see *United States v. Evangelista*, 122 F.3d 112, 120 (2d Cir. 1997), case law reveals that one or two improper remarks in an extended closing generally do not constitute grounds for reversal unless they are particularly egregious. *See, e.g.*, *United States v. Thomas*, 377 F.3d 232, 246 (2d Cir. 2004) (declining to reverse conviction where prosecutor twice accused defendant of having "lied"); *Coriaty*, 300 F.3d at 255 (noting "[w]e have upheld convictions after summations in which a witness was "[s]everal times . . . called . . . a liar"); *Floyd v. Meachum*, 907 F.2d 347, 349-53 (2d Cir. 1990) (reversal for prosecutorial misconduct where prosecutor "characterized [defendant] as a liar" a total of 40 times in her closing summation and rebuttal). The Connecticut

Supreme Court was, therefore, not objectively unreasonable in concluding that the state's attorney's reference to the "blue code of silence" and the law enforcement monument in Washington as well as his use of his badge were not so "frequent and pervasive" so as to have prejudiced the jury.

It is similarly difficult for this Court to conclude that the Connecticut Supreme Court's assessment of the severity of the prosecutor's improper remarks was not just erroneous, but unreasonable. With respect to the "blue code of silence" comments, the Connecticut Supreme Court reasoned that the prosecutor also made the unchallenged argument that police officers, like siblings, are loathe to testify against one another. *Ancona*, 270 Conn. at 613. Thus, while the Connecticut Supreme Court acknowledged that there was no evidence in the record supporting the existence of a "sociological phenomenon" of police silence, the court nonetheless concluded that the prejudicial effect of the "blue code" remarks was mitigated by the fact that the jury could arrive at a similar conclusion based on their "commonsense understanding of the realities of police work." *Id*. As for the comments about the monument and his badge, the Connecticut Supreme Court surmised that given that Mr. Ancona's case did not even remotely involve any harm to police officers, the jury likely recognized that the state's attorney's emotional invocation of the memory of slain police officers was way off-base. *Id*. at 615-16. This Court does not find either of these conclusions to be objectively unreasonable in light of the Supreme Court's "imprecise commands" on when a prosecutor's comments are sufficiently severe to deprive a defendant of a fair trial. *See Ewing*, 538 U.S. at 34 n.2.

In assessing the severity of the prosecutor's comments, the Connecticut Supreme Court also noted that Mr. Ancona's counsel had not objected to the state's attorney's argument regarding

the "blue code of silence," had not sought curative instructions and instead had sought to turn the prosecutor's remarks against the State. *See Ancona*, 270 Conn. at 615-16. As the Connecticut Supreme Court rightly observed, the fact that defense counsel failed to object to the prosecutor's remarks when made and instead sought to "capitalize on the state's attorney's" comments by arguing to the jury that the prosecutor's references were "indicative of the state's weak case," militates against the conclusion that the prosecutor's comments rendered the trial fundamentally unfair. *See Darden*, 477 U.S. at 182-83 n.14 (taking into account defense counsel's "tactical decision" not to object and ability "to use the opportunity for rebuttal very effectively, turning much of the prosecutors' closing argument against them").

As the Connecticut Supreme Court also noted, the trial court properly instructed the jury in the charge that the statements and arguments of counsel are not evidence. *Ancona*, 270 Conn. at 616-17. It was reasonable, therefore, for the Connecticut Supreme Court to conclude that "the trial court's general instructions likely minimized any harm that may have resulted from the [prosecutor's] improprieties," was also reasonable. *Id.*; *see Elias*, 285 F. 2d at 190-91 (nearly identical "pattern instruction" was sufficient to cure prosecutor's "gross[] mis-characteriz[ation]" of defense counsel's argument that "was clearly designed to inflame the passions of the jury").

Third, Mr. Ancona argues that the Connecticut Supreme Court "unreasonably relied on the two not guilty verdicts here as evidencing the lack of power (and thus prejudice) in the improper arguments." Pet.'s Supp. Mem. at 27. *See also Ancona*, 270 Conn. at 618 ("[T]he fact that the jury reviewed each charge and found the defendant guilty of some charges but not others strongly suggests that the jury discharged its responsibilities without regard to the improper comments of the state's attorney."). The Court disagrees. The Connecticut Supreme Court's

analysis closely tracks the Supreme Court's discussion in *United States v. Young*, 470 U.S. 1 (1985), in which the Supreme Court explicitly stated "the jury acquitted [the petitioner] of the most serious charge he faced. . . . This reinforces our conclusion that the prosecutor's remarks did not undermine the jury's ability to view the evidence independently and fairly." *Id*. at 18 n.15; *see also Floyd*, 907 F.2d at 356 (petitioner's "partial acquittal" was "certainly one factor to be taken into account"). It was certainly not unreasonable for the Connecticut Supreme Court to suggest that if the jury truly had been as inflamed as Mr. Ancona asserts, it would have convicted him on the more serious charges of assault. That the jury did not do so suggests that they were not overcome by passion arising from the prosecutor's comments.

In arguing that he has raised substantial questions as to the reasonableness of the Connecticut Supreme Court's decision, Mr. Ancona relies heavily on the Third Circuit's decision in *Moore v. Morton*, 255 F.3d 95 (3d Cir. 2001). However, the Court agrees with the State that *Moore* does not demonstrate that the Connecticut Supreme Court's resolution of his case was "objectively unreasonable." In *Moore*, an African-American defendant was charged with the grisly sexual assault of a Caucasian woman. The only contested issue was the identity of perpetrator and the only evidence against the defendant was the victim's description of her attacker and identification of the defendant after her memory had allegedly been "enhanced" by hypnosis. *Id*. at 118. Needless to say, the Third Circuit did not view this as particularly strong evidence. *Id*. at 119. Indeed, the court repeatedly emphasized the weakness of the evidence against the defendant, noting that "quantum or weight of the evidence is crucial to determining whether the prosecutor's arguments during summation were so prejudicial as to result in a denial of due process." *Id*. at 111. Against this backdrop of a weak case, the court concluded (over a

dissent) that the prosecutor's use of two improper arguments with explicitly racial undertones resulted in a fundamentally unfair trial. Not only did the prosecutor suggest that the petitioner "selected" Caucasian women based on the fact that his wife was also Caucasian, but he also suggested that if the jury did not credit the victim's testimony, then they would have "perpetrated a worse assault on her." *Id*. at 99-100. Thus, *Moore* presented a much different set of facts and therefore, the Third Circuit's conclusion in that case does not undermine the Connecticut Supreme Court's decision in Mr. Ancona's case.

At best – and as Mr. Ancona appears to recognize in his supplemental memorandum – he has established that "the ultimate decision on the merits" of his due process claim could "go either way." Pet.'s Supp. Mem. at 30. However, ADEPA requires this Court to review the Connecticut Supreme Court's decision not for correctness, but for objective reasonableness. *See Williams*, 529 U.S. at 410-11. Mr. Ancona has not identified any federal authority that persuades this Court that it is a "close question" whether any of the Connecticut Supreme Court's conclusions were "objectively unreasonable." To the contrary, as far as the Court can tell at this stage of the proceeding, the Connecticut Supreme Court engaged in a thorough and comprehensive analysis of the record and relevant case law and reasonably applied clearly established principles in concluding that Mr. Ancona had not been deprived of a fair trial. Accordingly, the Court concludes that Mr. Ancona has not sustained his burden of showing that his petition raises a "substantial claim," as that requirement is explained in *Mapp*.

III.

Although it is an admittedly a closer question, Mr. Ancona also has failed to persuade the Court that extraordinary circumstances exist that make the "grant of bail necessary to make the

habeas remedy effective." *Mapp*, 241 F. 3d at 230-31 (declining to grant bail where petitioner's release was not required to make deportation hearing "effective").

Mr. Ancona argues that extraordinary circumstances exist for two reasons. First, Mr. Ancona asserts that bail is appropriate in this case because "it is highly likely that Mr. Ancona would have served the entirety of his six month sentence [of incarceration] before his Petition is ruled upon by this Court."[4] *See* Pet.'s Mem. [doc. #4] at 7. Mr. Ancona does not argue that his release from actual custody in three to six months will render his petition moot, as this argument is clearly foreclosed by Supreme Court precedent. *See, e.g.*, *Carafas v. LaValee*, 391 U.S. 234, 237-40 (1968); *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Rather, Mr. Ancona asserts that "the incarceration period is certainly the most onerous part of [his] sentence," and therefore, the Court should find that the likelihood that the majority of his actual incarceration period will expire before the Court rules on his habeas petition constitutes exceptional circumstances. Pet.'s Supp. Mem. at 2. Second, Mr. Ancona asserts that his "status as an ex-police officer" should also figure into this Court's "exceptional circumstances" determination because it is possible that Mr. Ancona will be incarcerated along with prisoners whom he helped put into jail. The Court addresses each argument in turn.

The State concedes that it is possible that Mr. Ancona will end up serving only as little as three of the six months. See Resp.'s Objection at 28 n.4. It is also true that the possibility that a habeas petitioner would have completed his sentence before the Court's is able to grant him relief

---

[4] The trial court sentenced Mr. Ancona to imprisonment for five years, execution suspended after six months with four years of conditional discharge. *See* Resp.'s Objection at 28.

could, under some circumstances, rise to the level of extraordinary circumstances sufficient to justify release on bail in order to make a habeas remedy effective. *See, e.g.*, *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987); *LaFrance v. Bolinger*, 487 F.2d 506, 506-08 (1st Cir. 1973); *Boyer v. Orlando*, 402 F.2d 966, 968 (5th Cir. 1968); *Marino v. Vasquez*, 812 F.2d 499, 507-09 (9th Cir. 1987). *See also Cary v. Ricks*, No. 00 Civ 8926(RWS), 2001 WL 314654, at *3 (S.D.N.Y. March 30, 2001) ("If the claims [petitioner] raised were more substantial, the fact that [he] has now completed over four years of his 4 1/2 to 9 year sentence could well constitute an extraordinary circumstance warranting his release on bail in order to effectuate the habeas corpus remedy."). Nevertheless, the Court finds Mr. Ancona's situation to be distinguishable from the cases he cites.

As the State points out, in the majority of the cases that Mr. Ancona cites on the issue of bail, the district court had already granted the defendant's habeas corpus petition, and the issue was simply whether the defendant would remain free while the State pursued its appeal to the federal court of appeals. *See Hilton*, 481 U.S. at 777; *LaFrance*, 487 F.2d at 507; *Marino*, 812 F.2d at 507. The case for bail is much more compelling *after* a district court grants a petitioner's habeas petition, because in those circumstances, it can truly be said that bail is necessary to make the habeas remedy effective.

Of the cases Mr. Ancona has cited, *Boyer v. Orlando*, *supra*, is perhaps most applicable. In *Boyer*, the Fifth Circuit granted bail to a habeas petitioner who was sentenced to a term of 120 days so that he could exhaust his state remedies, stating that by the time the petitioner went back to state court "to pursue [his] post-conviction remedies," he would have long completed his sentence, foreclosing the possibility of any "practical relief . . . notwithstanding the Court's

recognition of his constitutional claim." In this case, the Court does not agree with Mr. Ancona's assertion that it "is unlikely that the Court could rule on the petition prior to the expiration" of his sentence. Pet.'s Supp. Mem. at 1. Mr. Ancona's six-month sentence is longer than the period of time at issue in *Boyer*, and the Court believes it is more than likely that it could rule on the petition if the parties agreed to an expedited briefing schedule, a suggestion that the Court made to the parties during the March 10 teleconference. The Court also notes that, at least in part, Mr. Ancona's predicament is self-inflicted. The Supreme Court denied Mr. Ancona's certiorari petition on January 10, 2005. Yet, Mr. Ancona did not file his habeas petition with this Court until February 28, 2005. Thus, the Court is not persuaded that the brevity of Mr. Ancona's period of incarceration constitutes an exceptional circumstances. And because Mr. Ancona's claims will not be mooted in any event, the Court does not believe that bail is needed to make a habeas remedy effective.

The fact that Mr. Ancona is an ex-police officer also is not so exceptional as to necessitate bail pending review. The Court hastens to emphasize that it in no way minimizes the importance of Mr. Ancona's safety as an inmate or the increased risks that may arise when a former police officer is incarcerated. However, granting bail is not the only way to guard against such risks. To rule otherwise would mean that bail was required every time a former police officer sought a habeas writ. To the Court's knowledge, there is no authority for such a per se rule. Furthermore, during a telephonic conference with counsel, the State's attorney indicated that the State was willing to make appropriate accommodations to minimize any risk of harm to Mr. Ancona. The Court has no reason to doubt the State's assurances that it will work towards the goal of ensuring Mr. Ancona's safety while he is incarcerated.

Over five years have passed since judgment entered against Mr. Ancona on January 14, 2000 in Connecticut Superior Court. *See* Judgment, App. A attached to Resp.'s Objection. It has been even longer since the conduct at issue took place in February of 1997. *See Ancona*, 69 Conn. App. at 30. The State has a substantial and legitimate interest in executing its judgment without further delay. Mr. Ancona has not demonstrated that there are compelling or exceptional circumstances that justify thwarting the State's legitimate interest at this point.

IV.

In conclusion, the Court DENIES Mr. Ancona's Motion for Bail Pending Consideration of Petition for Writ of Habeas Corpus [**doc. #4**].

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United Stated District Judge

Dated at New Haven. Connecticut: **April 8, 2005**.