UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RONALD BARNES	:	
	:	PRISONER
v.	:	Case No. 3:04CV775 (SRU)
	:	
FLORIDA PAROLE COMMISSION	:	
FLORIDA DEPT. OF CORRECTIONS	:	
CONN. BOARD OF PAROLE	:	
CONN. DEPT. OF CORRECTIONS	:	

RULING AND ORDER

The petitioner, Ronald Barnes ("Barnes"), brings this action pro se for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. He was convicted of armed robbery in 1980 and convicted of escape in1986. He was sentenced in the Florida state courts to a fifty-year sentence on the armed robbery conviction and a fifteen-year consecutive sentence on the escape conviction. Barnes currently is confined in Connecticut pursuant to the Interstate Corrections Compact ("ICC"). Barnes did not appeal either conviction. He brings this petition challenging the calculation of his parole date by the Florida Parole Commission. For the reasons that follow, this petition is dismissed without prejudice.

I. 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 that 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).

II. Discussion

Failure to exhaust state court remedies usually is raised in a motion to dismiss the petition. However, the court may raise failure to exhaust state court remedies sua sponte where petitioner's

failure to present his claims to the state's highest court is apparent from the face of the petition. See Granberry v. Greer, 481 U.S. 129, 133 (1987) (holding that a circuit court may raise sua sponte a habeas petitioner's failure to exhaust state remedies); Magouirk v. Phillips, 144 F.3d 348, 357 (5th Cir. 1998) (noting that federal court can raise failure to exhaust sua sponte); United States ex rel Riley v. McVicar, 1998 WL 665400 (N.D. Ill. Sept. 15, 1998) (dismissing federal habeas petition sua sponte because failure to exhaust state court remedies was apparent from the face of the petition).

Barnes is confined in Connecticut pursuant to the ICC. He challenges action by the Florida Parole Commission. In his petition, Barnes states that he has not raised his claims in any state court, Connecticut or Florida, because neither state court has jurisdiction to entertain his claims. This assumption is incorrect.

The ICC affords states the ability to effect economies in capital expenditures and operating expenses through the reciprocal use of prison space. The contract between the sending and receiving states sets forth the responsibilities of each state. Here, the receiving state, Connecticut, acts as the agent for the sending state, Florida. The prisoner at all times is subject to the jurisdiction of the sending state. See Smart v. Goord, 21 F. Supp. 2d 309, 313 (S.D.N.Y. 1998). Thus, the state court in Florida retains jurisdiction over Barnes' challenge to the decisions of the Florida Parole Commission. Accordingly, Barnes' petition is dismissed for failure to exhaust state court remedies in Florida.

In addition, after Barnes exhausts his state court remedies, he should file any federal petition in a district court in Florida. Federal district courts may grant a petition for writ of habeas corpus "within their respective jurisdiction." 28 U.S.C. § 2241(a). Historically, this phrase was construed to mean that a district court had habeas jurisdiction only over prisoners physically housed within the district.

See, e.g., Aherns v. Clark, 335 U.S. 188, 190-93 (1948). The Supreme Court has interpreted this phrase to require "nothing more than that the court issuing the writ have jurisdiction over the custodian." Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 495 (1973). See also Torres v. Warden, No. 3:99cv2326(PCD), 2000 WL 306860, at *1 (D. Conn. Jan. 21, 2000) (noting that Connecticut retained jurisdiction over habeas action even though inmate currently confined out-of-state). Thus, a habeas petition may be brought in the court with jurisdiction over the prisoner or his custodian.

Where a prisoner is confined in one state pursuant a sentence imposed following a conviction in a different state, the sentencing state is the prisoner's true custodian. The state where the prisoner is confined acts solely as the agent of the sentencing state. See Dunne v. Henman, 875 F.2d 244, 248 (9th Cir. 1989) ("Under Braden, the 'true custodian' is the official in the state whose indictment or conviction is being challenged."); Fest v. Bartee, 804 F.2d 559, 560 (9th Cir. 1986) (petitioner who was sentenced in Nebraska and confined in Nevada pursuant to ICC was in custody of Nebraska for purposes of challenging conviction); Smart, 21 F. Supp. 2d at 314 (determining that because receiving state acts only as agent of sending state, sending state is true custodian).

The district courts in Florida have personal jurisdiction over the Florida Parole Commission, the entity that will determine whether Barnes is released on parole. In addition, the matter will be decided based on Florida law. Thus, it is more appropriate for the petition to be filed in Florida. See Fest, 804 F.2d at 560 (holding that federal habeas petition more properly brought in sending state); Smart, 21 F. Supp. 2d at 318 (granting respondent's motion to transfer habeas action to sending state).

III. Conclusion

The petition for writ of habeas corpus [**doc. #1**] is hereby **DISMISSED** without prejudice for failure to exhaust state court remedies. In light of this decision, Barnes' motion for injunctive relief [**doc. #2**] is **DENIED** without prejudice. Barnes may refile his petition in the district court in Florida after he exhausts his remedies in Florida state court.

The Supreme Court has held that,

> [w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that 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). In addition, the Court stated that, "[w]here 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. This court concludes that a plain procedural bar is present here; no reasonable jurist could conclude that Barnes has exhausted his state court remedies. Accordingly, a certificate of appealability will not issue. The Clerk is directed to close this case.

SO ORDERED this 9th day of July 2004, at Bridgeport, Connecticut.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge