

3/13/12

11CV1869 Golder writ

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

2012 MAR 13 P 12:40

ALAN WILLIAM GOLDER,
petitioner,

v.

PETER MURPHY,
respondent.

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PRISONER

Case No. 3:11cv1869(AVC)

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, Alan William Golder, currently confined at the MacDougall-Walker Correctional Center in Suffield, Connecticut, commenced this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges his state court conviction for kidnapping, larceny and burglary. Upon review of the petition, the court noted that the petitioner did not appear to have exhausted his state remedies on all grounds for relief and afforded him an opportunity to show cause why the case should not be dismissed for failure to exhaust state court remedies. After reviewing the petitioner's response, the court concludes that the petition should be dismissed without prejudice.

A prerequisite to habeas corpus relief pursuant to 28 U.S.C. § 2254, is the exhaustion of available state remedies.

O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); 28 U.S.C. § 2254(b)(1)(A). The second circuit requires the district court to conduct a two-part inquiry. First, a petitioner must present the factual and legal bases of his federal claim to the highest state court capable of reviewing it. Second, he must have utilized all

available means to secure appellate review of his claims. See Galdamez v. Keane, 394 F.3d 68, 73-74 (2d Cir.), cert. denied, 544 U.S. 1025 (2005).

The petitioner asserts thirteen grounds in this petition: (1) the prosecutor switched his two case numbers at sentencing so the petitioner was sentenced on a charge of which he was acquitted; (2) testimony of the state's witnesses was altered in the transcripts; (3) the prosecutor knowingly used perjured testimony to secure the petitioner's conviction; (4) statements of the state's witnesses were withheld from the jury; (5) the jury was not told that the state's witness received favorable treatment in exchange for his testimony; (6) the prosecutor coerced a witness to testify falsely; (7) illegal search and seizure resulting from misrepresentations in the search warrant application; (8) lack of probable cause resulting from misrepresentations by the police in the search warrant application; (9) the prosecutor knew one of the charges was not supported by probable cause; (10) ineffective assistance of trial counsel; (11) ineffective assistance of appellate counsel; (12) the prosecutor tampered with jury selection; and (13) the Connecticut appellate court denied the petitioner an impartial appeal.

The petitioner stated his appellate counsel refused to include all of the grounds that he sought to raise on direct

appeal of his conviction and that the appellate courts refused to entertain motions he filed, trying to assert these claims, because he was represented by counsel. The petitioner also stated that he filed a motion seeking substitute counsel on appeal.

In the January 12, 2012 order, the court informed the petitioner that he must raise his claims before the Connecticut supreme court before filing a federal habeas corpus action. See Pratt v. Upstate Correctional Facility, 413 F. Supp.2d 228, 237 (W.D.N.Y. 2006) (stating that petitioner must exhaust state remedies either on direct appeal or through collateral attack in state court before filing a federal habeas corpus petition (citations omitted)). In Connecticut, claims of ineffective assistance of counsel must be raised through a state habeas corpus action. See State v. Leecan, 198 Conn. 517, 504 A.2d 480 (1986). The petitioner has not filed a petition for writ of habeas corpus in state court. Thus, he has not raised his ineffective assistance of counsel claims before the state courts. In addition, the petitioner could have obtained the required state court review of all of the remaining claims by including them as reasons for counsel's ineffectiveness, rather than by trying to file *pro se* motions while he was represented by counsel, a practice not permitted by the state appellate courts.

After affording the petitioner the required opportunity to

address the exhaustion of state remedies, this court concludes that the petitioner has not used all available means to obtain review of his claim by the Connecticut supreme court. See Acosta v. Artuz, 221 F.3d 117, 121-24 (2d Cir. 2000) (recognizing that courts may not sua sponte raise nonjurisdictional defenses without affording inmate "notice and an opportunity to be heard" relative to the proposed dismissal). The petitioner has not exhausted his state court remedies on any of the thirteen alleged grounds for relief. Accordingly, the petition is **DISMISSED** without prejudice for failure to exhaust state court remedies. The petitioner may refile a federal habeas corpus action after exhausting his state court remedies.

Because reasonable jurists would not find it debatable that the petitioner failed to exhaust his state court remedies, a certificate of appealability will not issue. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (holding that when the district court denies a habeas petition on procedural grounds, a certificate of appealability should issue if jurists of reason would find debatable the correctness of the district court's ruling). The clerk is directed to enter judgment and close this case.

SO ORDERED this 12th day of March 2012, at Hartford, Connecticut.

/s/ Alfred V. Covello, USDJ
Alfred V. Covello
United States District Judge