

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: June 18, 2014)

SHAWN ROBINSON

:

vs.

:

PM 2014-1317

:

STATE OF RHODE ISLAND

:

:

DECISION

CLIFTON, J. This matter is before the Court following preliminary hearings on Petitioner Shawn Robinson’s (Petitioner or Robinson) form Pro Se Application for Post-Conviction Relief Petition (Application), PM 2014-1317, filed January 15, 2014.

In a document (Omnibus Calendar Assignment Form) accompanying his Application, Robinson further alleges that, “I am being unlawfully held in segregation on disciplinary confinement status and denied legal telephone calls; access to the seg. law cart; and deprived my needed legal materials to appeal this wrongful conviction on the trumped up ACI charge for possession of a weapon that ACI staff planted.” (Emphasis added).

Robinson appeared before this Court in regard to his Application first on May 14, 2014 and lastly on June 13, 2014. After considering Robinson’s Application, the State’s Answer to the Application, Robinson’s additional written submissions filed June 6, 2014¹ and June 9, 2014 and Robinson’s oral arguments, this Court is compelled to rule that Robinson’s Petition must be

¹ In Robinson’s letter dated June 4, 2014, filed on June 6, 2014, in Paragraph 2, he wrote, “Also, I am going to seek permission from this Honorable Court to Amend my Application so this issue can be heard about me being denied appellate counsel to assist me with *my appeal on direct review*.” (Emphasis supplied)

dismissed without prejudice because Robinson's direct appeal from his conviction is still pending.

I

Facts and Travel

On February 9, 2011, the State of Rhode Island (State) filed a one-count Criminal Information (P2/2011-392A) charging that Robinson “. . . while incarcerated at the Adult Correctional Institution's Maximum Security did wear or carry concealed on his person a knife having a blade of more than three (3) inches in length . . . in violation of § 11-47-42(2) of the General Laws of Rhode Island, 1956, as amended (Reenactment of 2002).”

Following his arraignment, rulings on the numerous motions filed either by the attorney who represented him or the numerous motions filed by himself pro se before and after the appointment of stand-by counsel and several pre-trial conferences, a jury trial eventually took place on that charge before this Court beginning on July 16, 2012 and ending on July 20, 2012. The jury returned a guilty verdict on the charge. Robinson's Motion for New Trial was heard and denied by the Court on November 13, 2012. On January 16, 2013, Robinson was sentenced to a three-year term to serve consecutive to the sentence Robinson was then serving, imposed upon him by the State of Connecticut. On January 16, 2013, a “Notice of Appeal” from the conviction in P2/2011-392A was filed on behalf of Robinson by his then private attorney.

Subsequently, on January 15, 2014, Robinson filed his Application pursuant to G.L. 1956 § 10-9.1-1, et seq. On April 18, 2014, the State filed its Answer to Robinson's Application. Robinson appeared before this Court in this matter on May 30, 2014, as a result of his May 14, 2014 “Motion to Assign” and his “Petition for Writ of Habeas Corpus for Post-Conviction Relief.” Robinson appeared on May 30, 2014 pro se.

At the hearing on May 30, 2014, Robinson verbally acknowledged that his direct appeal, filed January 16, 2013, from his conviction in P2/2011-392A, was still pending. The State, at this hearing, orally raised the argument that because Robinson's appeal was still pending, this Application was not properly before this Court. This Court **sua sponte** ordered the State to provide Petitioner with the legal authorities in support of its position that, because Robinson's appeal was still pending, this Application was not properly before this Court. On the same day, May 30, 2014, the State complied with that order. The Court, with Robinson present, continued this matter to June 13, 2014, to afford Robinson the opportunity to respond to the State's arguments.

II

Discussion

Petitioner, in his Application filed January 15, 2014, expressly invoked “. . . Title 10, Chapter 9.1, Section 1 of Rhode Island General Laws” as the statutory grounds for the relief he is seeking.

Amongst other grounds, postconviction relief is available to, “Any person who has been convicted of, or sentenced for, a crime . . . and who claims: (1) That the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of this state[.]” Sec. 10-9.1-1(a)(1). However, there are limits imposed by § 10-9.1-1(b) on proceedings brought under the postconviction relief statute.

Section 10-9.1-1(b) provides, in part, the following: “This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” In State v. Duggan, 414 A.2d 788 (R.I. 1980), the Supreme Court

addressed the issue presented here, whether direct review of a conviction is available in a simultaneous proceeding under the postconviction remedy statute.

In Duggan, the Court wrote:

“(T)he phrase ‘(this) remedy is not a substitute for . . . direct review’ indicates a legislative intent that criminal defendants present on appeal all issues that can be disposed of by direct review. The Legislature could have reasonably determined that limited availability of the postconviction remedy will prevent waste of judicial resources. In addition to the direct appeal available to a defendant after conviction, both parties in a postconviction proceeding may appeal to this court from an adverse judgment. Thus, unrestricted access to the postconviction remedy could result in piecemeal review of convictions in this court.” Duggan, 414 A.2d at 790-91.

The Supreme Court held, “We rule therefore that a petitioner seeking postconviction relief must first satisfy the court that direct review of the issues presented in his application was not available to him To rule otherwise would permit substitution of postconviction proceedings for direct appeal, in contravention of the Legislature’s mandate.” Id. at 791.

In a later Rhode Island Supreme Court case, Leonardo v. Vose, 671 A.2d 1232 (R.I. 1996), the Supreme Court, in affirming a trial court’s grant of summary judgment on behalf of the Department of Corrections on the same ground raised by the State in this matter (that because Robinson’s appeal was still pending, this Application was not properly before this Court), wrote, “A defendant is entitled to file an application for postconviction relief once his or her conviction is final.” Leonardo, 671 A.2d at 1233. The Court went on to explain,

“Although the statute does not specifically make final conviction a prerequisite, common sense dictates that an appeal of a defendant’s conviction must be decided against the defendant before an application for postconviction relief can be considered. In this case, the applicant has appealed from his conviction. If and when that appeal is denied, the applicant is free to seek postconviction relief under G.L. 1956 § 10-9.1-1. At this time, however, Leonardo’s application for postconviction relief is premature.” Id.

The significant facts found in Leonardo are virtually identical to the facts present here. In his Application, Robinson alleges in paragraph 2, that he was “. . . convicted in Providence Superior Court on 7/20/2012.” Further, in paragraph 3 of his Application, he alleges he was “convicted of the crime of possession 11-47-42.” Later, in paragraph 4, he alleges he was “. . . sentenced to a term of 3 yrs (sic) to serve 3 yrs (sic) probation by Judge Edward C. Clifton.” Lastly, he alleges, in paragraph 5, “. . . his sentence and conviction are in violation of the United States Constitution and the Rhode Island State Constitution.”

Although Robinson at this point is appearing pro se in this matter, and this Court need no reminder that it should not hold Robinson to the exacting pleading standards it would require from an attorney licensed to practice law, there can be no ambiguity or uncertainty as to what Robinson is claiming in this Application; “I am being unlawfully held in segregation on disciplinary confinement status and denied legal telephone calls; access to the seg. law cart; and deprived my needed legal materials to **appeal** this wrongful conviction on the trumped up ACI charge for possession of a weapon that ACI staff planted.”

III

Conclusion

For all of the above reasons, this Court rules that, by August 18, 2014, Robinson shall, in writing, file his election to either:

- (1) Dismiss without prejudice his Application, PM 2014-1317 filed on January 15, 2014, as being premature because Robinson’s direct appeal from his conviction is still pending, or;

- (2) In the absence of a dismissal without prejudice submitted by Robinson by August 18, 2014, this Court will dismiss the Application without prejudice as being premature because Robinson's direct appeal is still pending.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Shawn Robinson v. State of Rhode Island**

CASE NO: **PM 2014-1317**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **June 18, 2014**

JUSTICE/MAGISTRATE: **Clifton, J.**

ATTORNEYS:

For Plaintiff: **Shawn Robinson, pro se**

For Defendant: **John E. Corrigan, Esq.**