

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARNELL CHAMBERLAIN : CIVIL ACTION
: :
v. : :
: :
MARIROSA LAMAS, et al. : NO. 13-790

ORDER

AND NOW, this 9th day of September, 2013, upon consideration of petitioner Carnell Chamberlain's pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (docket entry # 1), our Order referring this matter to the Honorable Elizabeth T. Hey for a report and recommendation (docket entry # 3), defendants' response (docket entry # 8), and Judge Hey's report and recommendation ("R&R") (docket entry # 9), to which neither party has filed an objection within the period specified by Loc. R. Civ. P. 72.1 IV (b), and the Court agreeing with Judge Hey that Chamberlain has not exhausted his state court remedies, as required by 28 U.S.C. § 2254(b)(1)(A), because he did not present the claims contained in his habeas petition in his direct appeal, and he did present them in his amended Post-Conviction Relief Act ("PCRA") petition, which is currently pending in the PCRA court, and that the exhaustion requirement should not be excused despite the delay in

Chamberlain's PCRA proceedings because Chamberlain shares responsibility for that delay and because the Honorable Sheila Woods-Skipper, who is currently overseeing the PCRA proceedings, "seems to have taken a very active role in seeing that the case proceeds as expeditiously as possible", R&R at 12, and the Court agreeing that a stay is unwarranted because Chamberlain will have ample time file a habeas petition after the conclusion of the PCRA proceedings¹, it is hereby ORDERED that:

1. Judge Hey's report and recommendation (docket entry # 9) is APPROVED and ADOPTED;

2. Chamberlain's petition for a writ of habeas corpus is DENIED WITHOUT PREJUDICE to its reassertion after the conclusion of the PCRA proceedings; and

¹ As Judge Hey explains in her R&R, Chamberlain will have 197 days following his appeal to file a timely habeas petition. His conviction became final on June 26, 2006, when the time for seeking certiorari in the United States Supreme Court expired. He filed a timely PCRA petition 168 days later, tolling the habeas limitations period. At the conclusion of the PCRA appeal, he will have 197 days to file a timely habeas petition in federal court. See R&R at 14 n.9.

3. The Clerk of Court shall CLOSE this case statistically.

BY THE COURT:

/s/ Stewart Dalzell, J.