

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DERRIC WILLIAMS,)
)
Petitioner,)
)
VS.)
)
RICK THALER, Director, Texas)
Department of Criminal Justice,)
Correctional Institutions Division,)
)
Respondent.)

CIVIL ACTION NO.

3:09-CV-1933-G (BH)

ECF

MEMORANDUM OPINION AND ORDER

Before the court is the petition of Derric Williams (“Williams” or “the petitioner”) for a writ of habeas corpus by a person in state custody. For the reasons discussed below, the petition is dismissed.

I. BACKGROUND

The petitioner, an inmate currently incarcerated in the Texas Department of Criminal Justice, Correctional Institutions Division (“TDCJ-CID”), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (“Petition” or “the petition”).

The respondent is Rick Thaler, Director of TDCJ-CID. The petitioner’s claimed

ground for relief is that his conviction for aggravated robbery with a deadly weapon was not properly supported by an oral pronouncement of an affirmative finding of a deadly weapon. Petition at 7, 11. The petition does not list the nature of the offense(s) for which the petitioner was convicted, any docket numbers, or the date of judgment of conviction. See *id.* at 2. The petition states only that the petitioner was convicted in the 291st Judicial District for “30 years aggravated.” *Id.*

On October 27, 2003, Williams entered agreed pleas of guilty before the 291st Judicial District Court to three counts of aggravated robbery with a deadly weapon (Cause Nos. F-02-73601, F-034-0783, and F-03-40784) and was sentenced to thirty years in prison.¹ The petition does not state whether Williams filed a direct appeal from any of these convictions. See Petition at 3. The Texas Fifth District Court of Appeals in Dallas has no record of a direct appeal from any of Williams’s three convictions.² The petition states that Williams has not filed any applications for a

¹ See Texas Department of Criminal Justice, Offender Information Detail (for TDCJ No. 01202848), <http://168.51.178.33/webapp/TDCJ/InmateDetails.jsp?sidnumber=05537790#Projected> (attached to this order as Exhibit 1); see also Dallas County, Dallas County Criminal Background Search (under “Williams, Derrick” and date of birth Sept. 27, 1978), <http://www.dallascounty.org/criminalBackgroundSearch/> (attached to this order as Exhibit 2).

² See Fifth Court of Appeals -- Dallas, Texas, Search for a Case (search results for “Williams and Derric*”), http://www.5thcoa.courts.state.tx.us/cgi-bin/as_web.exe?Command=search&file=C05_CASE.ASK%2Cc05c_old.ask%2Cc05tcase.ask&request=Williams+and+Derric*&MaxHits=10&NumLines=1 (attached to this order as Exhibit 3).

writ of habeas corpus with the state of Texas. Petition at 3. However, on June 2, 2006, Williams filed an application for a writ of habeas corpus with the Texas Court of Criminal Appeals seeking review of his conviction in cause number F-02-73601.³ The Court of Criminal Appeals dismissed the application for non-compliance on June 14, 2006.⁴ This means that Williams's application was not filed with the Court of Criminal Appeals but instead was returned to him because he did not file his application on the form required by Texas Rule of Appellate Procedure 73.1. *See* TEX. R. APP. P. 73.2.

II. ANALYSIS

A state prisoner is required to fully exhaust all available state court remedies before seeking federal habeas relief. 28 U.S.C. § 2254(b). To satisfy the exhaustion requirement of § 2254, a petitioner must fairly present the factual and legal basis of his claims to the highest available state court for review, either on direct review of the conviction or in a post-conviction challenge. *Deters v. Collins*, 985 F.2d 789, 795 (5th Cir. 1993); *Richardson v. Procnier*, 762 F.2d 429, 432 (5th Cir. 1985). The state

³ *See* Texas Courts Online -- Court of Criminal Appeals, Case Search Results on Case # WR-64,910-01, <http://www.cca.courts.state.tx.us/opinions/case.asp?FilingID=243619> (attached to this order as Exhibit 4).

⁴ *See* Texas Courts Online - Court of Criminal Appeals, Case # WR-64,910-01 -> Event: ACTION TAKEN, <http://www.cca.courts.state.tx.us/opinions/EventInfo.asp?EventID=2245707> (attached to this order as Exhibit 5).

court must have the opportunity to pass on the substance of the petitioner's claims. *Carter v. Estelle*, 677 F.2d 427, 443 (5th Cir. 1982), *cert. denied*, 460 U.S. 1056 (1983). Therefore, "the applicant must present his claims in a procedurally correct manner." *Deters*, 985 F.2d at 795.

A federal district court may raise the lack of exhaustion *sua sponte*. *McGee v. Estelle*, 722 F.2d 1206, 1214 (5th Cir. 1984) (en banc). It is well-settled that federal courts can dismiss without prejudice a federal petition for writ of habeas corpus that contains unexhausted grounds for relief. See *Rose v. Lundy*, 455 U.S. 509, 510 (1982). As a matter of comity, the state courts must be given a fair opportunity to hear and consider the claims raised by an applicant before those claims are heard in federal court. *Picard v. Connor*, 404 U.S. 270, 275 (1971).

To satisfy the exhaustion requirement in Texas, a petitioner must present his claim to the Texas Court of Criminal Appeals via either a petition for discretionary review or an application for a writ of habeas corpus. *Bautista v. McCotter*, 793 F.2d 109, 110 (5th Cir. 1986). A Texas inmate who does not file a petition for discretionary review as part of his direct appeal "will not be deemed to have exhausted his state remedies until he has raised his claims before the state's highest court through collateral review provided by state habeas procedures." *Richardson*, 762 F.2d at 432. A Texas prisoner who seeks state habeas review in a manner that does not comply with the Court of Criminal Appeals' procedural directives for seeking such

review has not exhausted his state habeas remedy. *Bautista*, 793 F.2d at 110. Specifically, if the Texas Court of Criminal Appeals dismisses an application for a writ of habeas corpus for non-compliance, that Court has not considered the merits of the claims presented in the application, and the claims remain unexhausted. *Slaughter v. Thaler*, ___ F. Supp. 2d ___, 2009 WL 3199482, at *2 (N.D. Tex. Oct. 1, 2009) (Kinkeade, J.); *Moore v. Quarterman*, 2009 WL 50000, at *2 (N.D. Tex. Jan. 6, 2009) (Kinkeade, J.).

In this case, Williams did not pursue a direct appeal from any of his three convictions. In addition, Williams has not sought collateral review of two of those convictions (Cause Nos. F-034-0783 and F-03-40784) through Texas habeas procedures. The lone habeas application Williams did file, which sought review of his conviction under Cause No. F-02-73601, was dismissed for non-compliance. It thus did not fairly present the substance of Williams's claim to the Court of Criminal Appeals. The Court of Criminal Appeals has simply had no opportunity to review any of the claims raised in the petition currently before this court. As a result, the court finds that Williams has failed to fully exhaust his available state remedies.

III. CONCLUSION

For the reasons discussed above, the petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice.

SO ORDERED.

November 30, 2009.



A. JOE FISH
Senior United States District Judge

EXHIBIT ONE

Offender Information Detail

SID Number: 05537790
TDCJ Number: 01202848
Name: WILLIAMS,DERRICK
Race: B
Sex: M
Age: 31
Maximum Sentence Date: 2033-05-20
Current Facility: [ALLRED](#)
Projected Release Date: [2033-05-20](#)
Parole Eligibility Date: [2018-05-20](#)

SPECIAL INFORMATION FOR SCHEDULED RELEASE:

Scheduled Release Date: Offender is not scheduled for release at this time.
Scheduled Release Type: Will be determined when release date is scheduled.
Scheduled Release Location: Will be determined when release date is scheduled.

Offense History:					
Offense Date	Offense	Sentence Date	County	Case No.	Sentence (Y-MM-DD)
1996-10-29	POSS C/S W/DEL COCAINE	1996-12-20	DALLAS	F-9651963-HJ	5-00-00
1996-05-29	POSS C/S COCAINE	1996-12-20	DALLAS	F-9646824-PJ	5-00-00
2002-09-10	AGG ROBBERY W/DDLY WPN	2003-10-27	DALLAS	F-0340784-WU	30-00-00
2002-09-10	AGG ROBBERY W/DDLY WPN	2003-10-27	DALLAS	F-0340783-WU	30-00-00
2002-09-19	AGG ROBBERY W/DDLY WPN	2003-10-27	DALLAS	F-0273601-QU	30-00-00
2002-10-13	POSS CONT SUBS-COCAINE	2003-10-27	DALLAS	F-0255743-QU	30-00-00

Projected Release Date:

Projected Release Date is the date, which is determined by the TDCJ Institutional Division Records

Office, that an offender is projected to be released from incarceration if not released on parole sooner. The calculation of the projected release date is affected by offense title and offense date.

** If an offender committed their offense prior to 9/1/1996 and their offense is mandatory supervision eligible, the projected release date is calculated as their scheduled release date to mandatory supervision (if not paroled prior to that), when their time credits (flat time served plus good time earned) equal their total sentence.*

** If an offender committed their offense on or after 9/1/1996 and their offense is mandatory supervision eligible, the projected release date is calculated as their scheduled release date to mandatory supervision (if not paroled prior to that), when their time credits (flat time served plus good time earned) equal their total sentence AND the Parole Board has approved their release to mandatory supervision (per the Discretionary Mandatory Supervision law); however, if the Parole Board denies the release on mandatory supervision, the projected release date is recalculated to reflect the same date as the maximum expiration date, which is otherwise known as their discharge date. Subsequent reviews by the Parole Board that result in approval for mandatory supervision release result in the projected release date being recalculated to an earlier date to allow for mandatory supervision release processing to occur.*

** If an offender is incarcerated for an offense that by law is non-mandatory supervision eligible, their projected release date matches their maximum expiration date, when their time credits (flat time only) equals their total sentence and they therefore discharge their sentence when released (if not paroled prior to that).*

Parole Eligibility:

An offender's parole eligibility is determined by the laws in effect on the date the offense was committed, the offense of conviction, and the sentence. The Board of Pardons and Paroles has complete discretion in parole decisions.

** State Jail offenders are not eligible for parole.

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EXHIBIT Two



Dallas County Criminal Background Search Service

NAME ENTERED WILLIAMS DERRICK NAME TYPE DF

LN		ARC	RS	DOB	CASE/BOND	CT	CHARGE	DISP
01	WILLIAMS DERRICK		BM	092778	F-0273601	FU	AGG ROB DW	PGBC
02	WILLIAMS DERRICK		BM	092778	F-0340783	FU	AGG ROB DW	PGBC
03	WILLIAMS DERRICK		BM	092778	F-0340784	FU	AGG ROB DW	PGBC
04	WILLIAMS DERRICK	A	BM	092778	MA9659635	ML	ASSAULT	PGBC
05	WILLIAMS DERRICK		BM	092778	F-9868809	FJ	DEL CS	NBIL
06	WILLIAMS DERRICK	A	BM	092778	F-9651963	FJ	POSS CS INT DE	PGJG
07	WILLIAMS DERRICK		BM	092778	F-0255743	FU	POSS CS INT DE	PGBC
08	WILLIAMS DERRICK	A	BM	092778	F-9646824	FJ	POSS CS 1G	REVK
09	WILLIAMS DERRICK	A	BM	092778	MB9567935	MJ	POSS MJ	REVK

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- If you have Boolean operators in your query, try using OR instead of AND
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Case Information:

Case Number: WR-64,910-01
 Date Filed: 6/2/2006
 Case Type: 11.07 HC
 Style: WILLIAMS, DERRICK
 v.:

Case Events:

Date	Event Type	Description
 6/14/2006	ACTION TAKEN	Application for Writ of Habeas Corpus - 11.07
 6/2/2006	WRIT RECEIVED	Application for Writ of Habeas Corpus - 11.07

Calendars:

Set Date	Calendar Type	Reason Set
 6/14/2006	STORED	WRIT STORED

Parties:

Party	Party Type
 WILLIAMS, DERRICK	Applicant (writs)/Appellant..

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COA Case Number:

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Opinion Cite:

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Trial Court: 291st District Court

County: Dallas

Case Number: W02-73601-U(A)

Judge: Susan Hawk

Court Reporter:

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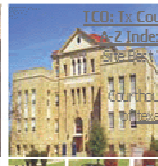
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Event Information:

Event Type: ACTION TAKEN

Description: Application for Writ of Habeas Corpus - 11.07

Date: 6/14/2006

Disposition: Dismissed -- Non-compliance - return to sender

Opinion Written:

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