

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

Richmond Division

CLYDE JOHNSON, SR.,)	
)	
Petitioner,)	
)	
v.)	C.A. 3:90CV00385
)	
LARRY HUFFMAN, WARDEN, AUGUSTA COUNTY)	
CORRECTIONAL CENTER, ET. AL.,)	
)	
Respondent.)	

MEMORANDUM OPINION

This matter is before the Court on Respondent's motion to dismiss petitioner's petition for a writ of habeas corpus. For the reasons presented below, respondent's motion will be GRANTED.

FACTUAL BACKGROUND

Petitioner Clyde Johnson, Sr., was convicted by a jury of 15 offenses involving rape, attempted rape, and aggravated sexual assault. These offenses were committed against four victims. Each of the victims took the witness stand and testified against the defendant. The petitioner did not testify. The jury recommended a sentence of 161 years. The trial judge sentenced Johnson to 121 years on September 16, 1987.

Petitioner appealed to the Court of Appeals of Virginia, alleging several errors with the trial proceedings. After argument, the appeal was granted in part and denied in part. In particular, the Court of Appeals found that petitioner should have been granted an evidentiary hearing with regard to witnesses Thomas

and Wiggins. Petitioner had alleged that Thomas and Wiggins were involved in a lesbian relationship which would establish a motive to fabricate charges against the petitioner. The Court of Appeals found that the Virginia Rape Shield Law had been misapplied, and it reversed the convictions of Thomas and Wiggins. For a variety of reasons unrelated to the merits, the State then nol prossed those charges involving Thomas and Wiggins. The petitioner's sentence was reduced to 45 years, which represented the sentence on the affirmed convictions relating to victims Harris and Mason.

Petitioner's appeal to the Virginia Supreme Court was denied, and this Court assumes without deciding that petitioner has fully exhausted his state remedies.

The petition for habeas corpus states two claims. First, petitioner claims that he was entitled to an evidentiary hearing regarding the charges of victim Harris. Second, he claims that the reversed convictions on the Thomas and Wiggins counts prejudiced the jury during the trial and in sentencing. Neither of these claims are constitutionally cognizable.

DISCUSSION OF LAW

Petitioner first essentially argues that the trial court misapplied the Virginia Shield Law with regard to victim Harris. It is well established that Rape Shield laws serve a legitimate state interest. See Doe v. United States, 666 F.2d 43, 48 n.9 (4th Cir. 1981) (collected cases). Instead of challenging the constitutionality of the law, petitioner here contends that it should not have been applied to the testimony of victim Harris.

This is clearly an issue of state law, which cannot be addressed on federal habeas corpus review. See Lewis v. Jeffers, 110 S.Ct. 3092, 3102 (1990); Engle v. Isaac, 456 U.S. 107, 119 (1982).

Petitioner claims that the denial of an evidentiary hearing regarding Harris deprived him of due process and a fair trial. Yet petitioner can cite no authority for this proposition. Instead, it has been widely recognized that evidentiary errors must render the trial "fundamentally unfair" before they will be subjected to federal habeas review. See, e.g., Johnson v. Dugger, 817 F.2d 726 (11th Cir. 1987); Lincoln v. Sunn, 807 F.2d 805 (9th Cir. 1987).

Petitioner presents no evidence that the trial court's exclusion of Harris's sexual history was an error of constitutional magnitude. Instead, there is every reason to believe that the Court balanced the impact of her history on her credibility, and decided that the privacy protected by the Shield law was paramount to the attack on her credibility. This type of balancing will not be reviewed or reversed by a federal court on habeas review. In the absence of any case law, this Court can hardly conclude that the trial court was constitutionally compelled to allow petitioner to delve into Harris' sexual history.

Petitioner's second claim also fails to rise to the constitutional level. Petitioner essentially claims that the trial and sentencing were prejudiced by the convictions of Thomas and Wiggins. Since these convictions were reversed by the Virginia Court of Appeals, petitioner claims that he is entitled to a new trial on the other counts as well. This claim is too speculative to justify federal habeas review.

First, it is unclear that Thomas and Wiggins would have in fact been discredited after an evidentiary hearing. It is entirely possible that these convictions would remain. Second, the jury may have imposed a greater sentence on the Harris and Mason convictions if it knew that the defendant would not be convicted or sentenced for his alleged actions toward Thomas and Wiggins. Third, petitioner fails to show that evidence of a lesbian relationship between Thomas and Wiggins would have any impact upon the conviction for sexual advances made toward Harris and Mason. Fourth, the trial judge reduced the sentence recommended by the jury, thus insulating any impact that the joint conviction had upon the jury.

Finally, the decision of the Virginia Court of Appeals was not mandated by the United States Constitution. Instead the Court of Appeals apparently based its decision on the interpretation of the Virginia Rape Shield Law. Under these circumstances, the Virginia courts may certainly fashion a remedy, namely reversal of the two convictions, without interference from the federal courts. Indeed, the decision of the Court of Appeals recognizes that the refused evidentiary hearing was only directly relevant to the convictions of Thomas and Wiggins, and therefore reversed only those convictions. This Court finds no reason to disturb that conclusion.

CONCLUSION

In Saffle v. Parks, 110 S.Ct. 1257, 108 L.Ed. 2d 415 (1990), and other recent cases, the Supreme Court has held that federal

habeas petitions must not seek a "new rule" of constitutional law. These decisions hold that the result sought by a petitioner must be "compelled" by constitutional law as it existed at the time of trial. 110 S.Ct. at 1261. The only exceptions to this rule involve categories of conduct outside the criminal law, and new "watershed rules of criminal procedure." Sawyer v. Smith, 110 S.Ct. 2822, 2832, 111 L.Ed. 2d 193, 211 (1990). Neither of these exceptions apply to petitioner's claims.

Petitioner cites no authority, nor has any been found by this Court, which would compel the state courts to grant either of petitioner's claims. Taken at face value, petitioner's claims fail to question the "fundamental fairness" of petitioner's trial. Rather, petitioner's claims amount to little more than a dispute about the proper application of the Virginia Rape Shield Law and the prejudicial effect of excluding certain testimony. In the absence of outrageous or arbitrary conduct in the state courts, these issues have no place in federal habeas review. The state courts have considered these arguments, and reached results consistent with the United States Constitution. The respondent's motion is therefore GRANTED, and the petition is DISMISSED WITH PREJUDICE.

Let the Clerk send a copy of this Memorandum Opinion to the petitioner and all counsel of record.

DATE

UNITED STATES DISTRICT JUDGE