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

Richmond Division

EMERSON EUGENE STEVENS,)	
)	
Petitioner,)	
)	
v.)	C.A. NO. 3:92CV540
)	
FRED GREENE, Warden,)	
Brunswick Correctional Center,)	
)	
Respondent.)	
)	

MEMORANDUM OPINION

This matter is before the Court on the respondent's motion to dismiss the petition for a writ of habeas corpus. For the reasons given below, the Court holds that habeas corpus is inappropriate in the instant case and Respondent's motion to dismiss is GRANTED.

BACKGROUND:

A habeas corpus petition was filed by Mr. Stevens, a prisoner that is currently under detention pursuant to a July 12, 1986 conviction for murder and abduction with intent to defile in the Circuit Court for the County of Lancaster. He is serving a sentence totaling one hundred and sixty-four (164) years, and attacks the validity of his conviction on several grounds. Claiming that the evidence against him was insufficient for the conviction, among other things, he appealed to the state Court of Appeals and Supreme Court.

Having failed to prevail on the direct appeals, Petitioner has filed the instant petition, which has thus far been dismissed by both the Circuit Court and the state Supreme Court. He alleges that the prosecution failed to disclose to him that a witness had sought a reward in the case, and also failed to disclose the results of tests performed on evidence taken from his boat and truck. Petitioner further claims that he was denied effective assistance of counsel because his attorney did not appeal the prior denial of his petition for a writ of habeas corpus.

DISCUSSION:

Petitioner did not raise the issue that the prosecution failed to divulge to him the fact that a witness sought a reward, in his direct appeal, and committed a procedural default in his appeal of his state habeas corpus petition from the Circuit to the Supreme Court of Virginia. Thus, this Court may not consider that issue. See Wainwright v. Sykes, 433 U.S. 72, 97 S.Ct. 2497 (1977); Coleman v. Thompson, ___ U.S. ___, 111 S. Ct. 2546 (1991).

As to Petitioner's charge that the prosecution failed to disclose the results of tests on evidence taken on his boat and truck, the state Court of Appeals held that Petitioner has procedurally defaulted by failing to make any objection at trial. This being the case, this Court may not consider this issue either. See Sykes, 433 U.S. 72; Harris v. Reed, 489 U.S. 255, 109 S.Ct. 1038 (1989). And with respect to the last allegation, that Petitioner was denied effective assistance of counsel, it has been

repeatedly held by the United States Supreme Court that one is not entitled to effective counsel in a habeas corpus proceeding. See Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987); Coleman, 111 S.Ct. 2546.

Petitioner is clearly not entitled to relief on his petition for a writ of habeas corpus. Accordingly, Respondent's motion to dismiss is GRANTED.

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

DATE

SENIOR UNITED STATES DISTRICT JUDGE